

KADG220002052018



**IN THE COURT OF THE PRL. CIVIL JUDGE & J.M.F.C.,
CHANNAGIRI**

:- PRESENT :-

**Shri. Siddalingayya B. Gangadharamath,
B.Com. LL.B. (Spl),
Prl. Civil Judge & J.M.F.C.,
Channagiri.**

Dated: This the 15th Day of February 2024

O.S.No.45/2018

PLAINTIFFS : Sri. C.L.Siddapa and Others

V/s

DEFENDANTS : M/s. TUMCOS Ltd., and Others

I.A.NO.XXIV

Applicant/Plaintiff : Sri. C.L.Siddapa and Others

V/s

Opponents/Defendants: M/s. TUMCOS Ltd., and Others

1.	Provision under which the application is filed	Under Order 6 Rule 17 R/w Sec.151 of CPC
2.	Relief sought for	Amendment of plaint

3	Date on which the application is filed	09.01.2024
4.	Number of the application	I.A.No.XXIV
5.	Date on which the objections are filed by different opponents	17.01.2024
6.	The date on which the orders is passed	15.02.2024

ORDER ON I.A.NO.XXIV

The plaintiff filed the instant application under Order 6 Rule 17 R/w Sec.151 of CPC praying for permission to amend the plaint. It is filed at the stage of cross examination of DW.1.

2. SOME AND SUBSTANCE OF THE AFFIDAVIT AS UNDER:

The plaintiff No.1 has sworn the affidavit and wherein he stated that, he visited the schedule property along with Civil Engineer namely, Nandish S/o Kumaraswami in the third week of December 2023. He got measured the property through the said engineer and he came to know that, the defendant No.1 encroached an extent of East to West 22 feet and North to South 20 feet towards South Western side of suit schedule property by erecting compound wall without any proper license, in the first week of December 2023. The said encroachment and erection of compound wall is during the pendency of the suit.

3. The deponent further affirmed that, the defendant No.1 had entered into compromise with the deponent and his mother in O.S.No.136/1991, before this court and the compromise decree was passed therein. The defendant No.1 had undertaken to leave 20 feet space towards the Western side of suit schedule site, for the purpose of formation of road. The said road was not formed by the Municipality due to influence of defendant No.1. By taking undue advantage of the same, the defendant No.1, their men have unjustly got constructed the compound wall about 6 inches in width, 7 feet in height, 22 feet East to West, North to South 20 feet in length and thereby blocked the entire access to the said road. On 04.05.2023, the defendant No.1 with the help of the labors dug up the ground to form a drainage having length of 60 feet East to West, in width of 3 feet, North to South and 3 feet in depth. They managed to drain the waste water inside the suit schedule property and by that drainage line the waste water logging and causing serious concern over the landscape of suit property. The plaintiffs suit is for the reliefs of declaration and permanent injunction. The some of the encroachment did happen during the pendency of the suit and as such the plaintiff intends to include those pleadings with necessary reliefs, in that regard. If the

application is allowed no hardship or loss would be caused to the other side. On the contrary, the plaintiffs will be put to irreparable loss and injury. Thus, the plaintiffs pray to allow the application.

4. STATEMENT OF OBJECTIONS FILED BY THE DEFENDANT NO.1 AS UNDER:

The defendant No.1 denied the entire contents of the affidavit filed in support of the application. It is the specific contention of the defendant No.1 that, the application on hand is filed with an intention to protract the proceedings. The plaintiff, in the cross examination has categorically admitted the actual situation of the spot of drainage, compound wall and also he admitted the real state of affairs of the suit schedule property. The PW.1 has also admitted the photographs of the plaintiffs property and the defendant No.1's compound wall. Thus, he filed this application in order to set up new facts and also disprove the admissions given by the plaintiff in the cross examination. Thereby, he intends to fill up the gap and also to overcome the admissions in the cross examination. The plaintiff has categorically admitted regarding the compound wall, put up by the defendants around their property prior to filing of the

suit and this fact has been admitted in the cross examination. The defendant has not violated terms of the compromise decree dated 24.09.2004, in O.S.No.136/1991. The proposed amendments are new facts and there is no cause of action for the same. The same are introducing in order to create additional evidence without any legal and valid documents. Thus, the defendant No.1 prays to reject the application.

5. On the basis of application and objections of plaintiffs and defendants, the following points arise for my consideration;

POINTS

1. Whether the plaintiffs have made out sufficient grounds to allow the application?
2. What Order?

6. Heard the learned counsels appearing for the plaintiffs and the defendants. Perused the materials placed on record and my answer to above points as under:

POINTS

- POINT NO.1 : In the Negative,
POINT NO.2 : As per final order
for the following:

REASONS

7. **Point No.1:-** Plaintiffs filed the suit for the relief of declaration the title to suit property and perpetual injunction against the defendants. The suit schedule property is a part of layout formed by one Kampalappa S/o Dhurugappa Kampalappa. The same was sold to one K.Siddappa and K.Lakkappa, who are the son of Aane Siddappa. These two brothers partitioned the property on 02.11.1970 and in it the suit schedule site was allotted to the share of K.Lakkappa. After his death, the legal heirs succeeded the same and the property records are standing in their name. The Southern boundary of the suit schedule site is 3 feet width drainage and thereafter the property of defendant No.1, comprised under Sy.No.77/3 is situated. The defendant No.1 is registered body, representing by the Managing Director. There was litigation amongst plaintiff and defendants under O.S.No.136/1991 and the same came to be ended in compromise decree dated 24.09.2004. The sketch was prepared in the said suit and it was annexed to the compromise decree and therefore the Hon'ble Court was treated the said sketch as part and parcel of compromise decree. The plaintiffs laid a foundation over the suit schedule site in the year 1991. The defendants removed the same in the last week of

January 2018, misusing the absence of plaintiffs, as plaintiff No.1 and 2 are residing at Shivamogga. The plaintiff no. 3 is being younger brother of plaintiff is at Channagiri, who is mild and poor man. As the defendants attempted to encroached suit site with a view to built superstructure thereof on 10.08.2018, thus, the plaintiffs filed the suit for declaration. On that cause of action the plaintiffs approached this court for the relief of declaration and permanent injunction.

8. Resisting the claim, the defendant No.1 filed the written statement. Admitted the compromise decree passed in O.S.No.136/1991. The defendant No.1 denied the allegations of encroachment and the removal of foundation. The defendant No.1 is contesting the matter on the grounds that, the rough sketch filed by the plaintiff is created and is not in accordance with law, the actual state of affairs of property and the comprise decree. The said suit was filed by one Siddamma and 6 others. Wherein, the schedule property was described as site No.24 comprised in Sy.No.77/2A of Channagiri. The measurement of the property was shown thereunder as East to West 60 feet, North to South 30 feet and was bounded by East : property of first defendant, West : 20 feet road and properties of Sri.Kampalappa, North : building site No.20 feet, South : water

drain. In present suit they schedule property described as Sy.No.77/2A-P16 situated at opposite main bus stand, Channagiri and the boundaries described as East : property of Kallappa in bearing Sy.No.77/P1, West : road having 20 feet width, North : site No.23 in land bearing No.77/2A, South: 3 feet drainage and after the property belonging to the defendant No.1. Thus, the suit schedule property description is absolutely wrong one and for that the defendant No.1 prays to dismiss the suit.

9. Having regards to the pleadings of the party and the oral as well as documentary evidence, it appears that, initially, the plaintiff filed the suit for the relief of declaration and perpetual injunction against defendant No.1. The plaintiff has categorically mentioned in the application that, in the month of December 2023, the defendants did drainage line and also put up the compound wall on the side of suit property and according to plaintiffs they encroached the portion of suit property to certain extent on the South Western side. As per the proposed pleadings and the affidavit filed in support of the application, the plaintiffs have got measured their property through the Engineer namely, Nandish S/o Kumarswami in the month of December 2023. Thereafter, they came to know the

alleged encroachment in the suit schedule property and as such filed the instant application.

10. It is well settled law that, the subsequent events always be regarded until the decision of suit is concerned. The Hon'ble Supreme Court was pleased to held in the decision, **Nitaben Dinesh Patel Vs. Dinesh Dahyabhai Patel**, reported in **2021 (20) SCC 210** that,

"Therefore, if some facts have come to the knowledge subsequently and subsequent to the commencement of trial, may be during the course of trial and it if is found that it is necessary for the purpose of determining the real questions in controversy between the parties, on fair reading of Order 6, Rule 17 CPC, such an amendment can be allowed even after the trial has commenced."

11. Admittedly, the plaintiffs have filed a suit for the relief of declaration and permanent injunction. As per the allegations that have setforth under the proposed pleadings, the defendant No.1 did encroach the suit property during the pendancy of this suit. As such necessary prayer for mandatory injunction to get

vacant possession of the same is being put forward for addition in the plaint. Thus, the same is absolutely permissible and be regarded to meet the ends of justice and equity. As also to avoid the multifarious of the litigations amongst the parties. If the application, as prayed for is rejected, the plaintiffs must face another ground of litigation to get back the alleged encroached portion at the hand of defendants. Anyhow, the defendants have got every right to file the additional written statement and to contest the proposed pleadings also. They will have an opportunity of cross examination of the plaintiff to that aspect.

12. The learned counsel for defendants much highlighted the cross examination of PW.1 and the admissions that are appearing in it. It is well settled law that, the consideration of the application filed under order 6 Rule 17 of CPC is only the need of proposed amendment, due diligence of the plaintiffs and therefore, the merits of the case is absolutely irrelevant. Thus, in my considered opinion, to meet the ends of justice and equity, the plaintiffs be allowed to incorporate the pleadings and that would avoid the multifarious of litigations. At the same time the other side should be compensated suitably. Therefore, I feel it appropriate to impose reasonable cost upon the plaintiffs. Thus, the **point No.1** is held in the **Affirmative**.

13. **Point No.2:-** As a result, I proceed to pass the following:

ORDER

**I.A.No.XXIV filed Under Order 6, Rule 17
R/w Sec.151 of the Code of Civil Procedure by
the plaintiffs is hereby allowed on cost of Rs.
200/-.**

**In furtherance, the plaintiffs permitted to
amend the plaint in accordance with the
schedule given under the application.**

(Dictated to the Stenographer, transcribed and computerized by her, corrected by me and pronounced in the Open Court on this **15th day of February, 2024**)

Sd/-

**(Siddalingayya B. Gangadharamath)
Prl. Civil Judge & J.M.F.C.,
Channagiri.**