

**IN THE COURT OF THE II ADDL CIVIL JUDGE & JMFC,  
CHANNAGIRI.**

PRESENT: **SMT. MAHALAKSHMI G M.A. L.L.B.,**  
II Addl Civil Judge & JMFC, Channagiri.

**Dated this the 11<sup>th</sup> Day of March , 2024.**

**ORIGINAL SUIT No. 138/2023**

**BETWEEN :**

B.C. Ashokachari and others **...Plaintiffs**

**AND**

Nethigere Mahadevappa and others **...Defendants**

**I.A. No. III**

**BETWEEN :**

B.C. Ashokachari and others

**...Applicants/Original Plaintiffs**

**AND**

Nethigere Mahadevappa and others **...Opponent/Original Defendants**

|    |                                                                |   |                         |
|----|----------------------------------------------------------------|---|-------------------------|
| 1. | Provision under which the application is filed:                | : | 6 Rule 17               |
| 2. | Relief sought for                                              | : | Amendment in the plaint |
| 3. | Date on which the application is filed                         | : | 18-01-2024              |
| 4. | Number of the application                                      | : | IA.No.III               |
| 5. | Date on which the objections are filed by different opponents: | : | 15-02-2024              |

|    |                                         |  |            |
|----|-----------------------------------------|--|------------|
| 6. | The date on which the orders is passed: |  | 11.03.2024 |
|----|-----------------------------------------|--|------------|

### **ORDERS ON No. III**

The plaintiff/party in person has filed this application U/o 6 rule 17 of CPC seeking permission of the court to amendment in the plaint schedule as mentioned in the application schedule. This application filed by the plaintiff when the case is posted for hearing on IA No.1.

2. In support of said application the plaintiff has filed an affidavit contenting that, 1<sup>st</sup> plaintiff and he and his wife are the 1<sup>st</sup> and 2<sup>nd</sup> plaintiff in the suit. He has filed this suit against the defendants seeking the relief of permanent injustice. He further stated that the defendants and their legal heirs are causing disturbance to use the road for the plaintiff and for public which is nakasha road. Since the boundaries of suit schedule property has mentioned in the plaint wrongly by typographical error and same is came to his knowledge while he was arguing on IA No.1. Hence, the said amendment is very much necessary to amend the plaint schedule as mentioned in the present application. If this application is not allowed he will be put to great injustice and irreparable loss. Therefore, prays to allow the application.

3. On the other the defendants filed objections to the Ia No.3 contenting that the suit filed by the plaintiff is not maintainable. The plaintiff has filed this present suit against them seeking for judgment and decree of permanent injunction for the purpose of right to way in the defendants suit schedule properties which is not maintainable. The plaintiff

repeatedly mentioned wrong boundaries in which the application for the purpose of way for in grace and ex grace. The plaintiff suppressed the materials facts before this court. Hence, prays to dismiss the application. The defendant further contended that, the plaintiffs are an habitual litigants and prosecuting the above application unnecessarily against these defendants which causes mental torcher to them with out producing any original documents, The plaintiffs are making mis representation before this court. The plaintiff also filed previous application in the same provision and same is withdrawn by him . Therefore, prays to dismiss the application on Ia No.3.

4. Head the arguments from both sides.

5. The points that would arise for consideration is as follows:-

#### **POINTS**

- 1. Whether the plaintiff made out grounds to allow the IA No.III as prayed for?**
- 2. Whether the proposed amendment is necessary for proper adjudication of the matter?**
- 3. What order?**

6. My Answers to the above points are as follows:-

**Point no.1: in the Affirmative**

**Point no.2: in the Affirmative**

**Point No.3:As for final order**

#### **REASONS**

**7. POINT NO.1 and 2:** This suit filed by the plaintiff for the relief of

permanent injunction. The plaintiff came with this application before this court when the case is posted for hearing on IA No.1. The plaintiff seeking amendment in the plaint schedule as mentioned in the application. He contended that, the said amendment is necessary to prove his case the said mistake came to his knowledge while he was referring the IA No.1 the same is typographical error.

8. This is the suit filed by the plaintiff for permanent injunction and he contended that proposed amendment in the suit schedule is every much necessary to adjudicate the matter. It is burden casted upon the plaintiff to prove his case by producing evidence. Moreover, this is suit for permanent injunction if this application is not allowed it will leads to multiplicity of proceedings. To consider the contention of the defendants whether the plaintiff is a habitual litigant or not requires full plead trial. Whether the plaintiff have right of way on the nakasha road or not is also a matter of trial. The claim of the plaintiff is genuine or not will be considered after completion of trial. At this stage, the contention of the plaintiff that the proposed amendment is very much necessary for complete adjudication of the matter and to avoid multiplicity of proceedings. The defendants have a chance to cross the PW.1.

9. The Hon'ble Apex Court and High Court laid down direction in ample number of cases regarding amendment in pleadings to be considered liberally before commencement of trail and it is settled law in position. Where the amendment is sought before commencement of trail the court is required to very liberal in its approach. In the instant case still trail is not commenced. The court is require to bare in mind the fact that the opposite party which have a chance of meet the case setup in amendment. Equally

where the amendment is necessary for the court to effectively adjudicate of the main issues in controversy between the parties. The amendment should be allowed to avoid multiplicity proceedings. The defendants also have an opportunity to file additional written statement.

10. Accordingly, this court is of the opinion that, the proposed amendment is very much necessary for adjudication of the matter and no injustice will cause to other side. Accordingly, the **point No.1 and 2** under reference are answered in the **Affirmative**.

**11. Point No.2:-** In the result, I proceed to pass the following;

**ORDER**

**I A. No.III filed by the  
plaintiff U/o 6 rule 17 of CPC is  
hereby allowed.**

**The Plaintiff is directed to carry  
out amendment and to produce  
amended plaint.**

**Call on:21-03-2024**

(Dictated to the stenographer typed by her, corrected by me and then pronounced in the open court on this the 11<sup>th</sup> Day of March 2024)

**(Smt Mahalakshmi G)  
II Addl Civil Judge & J.M.F.C.,  
Channagiri.**

(Vide separate order pronounced in the open court)

**ORDER**

**I A. No.III filed by the plaintiff U/o 6 rule 17 of CPC is hereby allowed.**

**The Plaintiff is directed to carry out amendment and to produce amended plaint.**

**Call on:21-03-2024**

**II Addl Civil Judge & J.M.F.C.,  
Channagiri.**