

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

Dated: 27th Day of January 2025

PRESENT: **SMT. MAHALAKSHMI G M.A.**

L.L.B.,

**II Addl Civil Judge & JMFC,
Channagiri.**

OS No.42-2021

BETWEEN :

Nalinakshi

...Plaintiffs

AND

Rajashekar and others

...Defendants

I.A. No. IV to VI

BETWEEN :

Nalinakshi

...Applicants/Original plaintiffs

AND

Rajashekar and others

...Opponent/Original defendants

1.	Provision under which the application is filed:	:	Under order 6 rule 17 R/w of CPC., Sec 151 of CPC and Under order 7 rule 14(A) CPC.
2.	Relief sought for	:	Amendment in the plaint schedule Recall of PW-1 for Further Chief, condoning the delay in filing

			documents.
3.	Date on which the application is filed	:	15-06-2024
4.	Number of the application	:	IA.No.IV to VI
5.	Date on which the objections are filed by different opponents:	:	27-06-2024
6.	The date on which the orders is passed:		27-01-2025

Date: 27.01.2025
Place: Channagiri.

(Smt.Mahalakshmi G)
II Addl Civil Judge And Jmfc.,
Channagiri.

ORDER ON No.IV to VI

These are the applications filed by the plaintiff when the case is posted for further cross of PW.1 seeking order of the court to amendment in the northern boundaries as well re-open the case from the stage of further cross of PW.1 to further chief of PW.1 by recalling the Pw.1 for further chief examination along with one e-swathu document. The plaintiff sought the amendment in suit schedule northern side boundary which is mentioned as Chiradoni - Navilehal road and to substitute the same as "House of Jayadevappa" as mentioned in the schedule.

2. In support of these applications the plaintiff sworn an common affidavit stating that, she know the facts of the case. While filing suit the northern boundary mentioned in the suit schedule mentioned as Chiradoni-Navilehal road, instead of mentioning house of Jayadevappa. It is only typographical

mistake. the same is not intentional and it is bonafide one. As per the registered document and E-swathu Northern boundary of the suit schedule property shown as house of Jayappa. The typical mistake came to her knowledge recently as such it is just and necessary to amend the schedule of the Southern boundary in the above suit. If these applications are allowed no hardship will be caused to the other side. On the other hand if this applications are not allowed it will put to great injustice and inconvenience to her.

3. The defendants filed statement of objection to the said IA's and contended that, according to the plaintiff, while filling the suit the plaintiff was in possession of suit schedule property which is surrounded by East: Vacant site of Nadigera Kenchappa, West: Property of Rajappa S/o Muregappa Gowdru Hitallu, North: Chiradoni-Navilehal Road, South: Panchayath Road. The cause of action arisen with the boundaries of the original plaint schedule. After rejection of IA No.1 by this court the plaintiff was amended the boundaries towards southern side of plaint schedule which is mentioned as property of defendants instead of panchayath road. After the first amendment during the course of cross examination of PW.1, admitted that she has been in possession of schedule property bounded by East; Vacant site of Nadigere Kenchappa, West: Property of Rajappa S/o Muregappa Gowdru Hitalu, North: Chiradoni- Navelahal Road, South: House of Paraplara Sanna Mallappa i.e., defendants property. Subsequently turned her mind she has been possession of upto towards schedule property which is house of Jayappa instead of Chiradoni-Navilehal Road. Thus, it is a suit for permanent injunction. The

plaintiff has entered twice amendment in the suit schedule boundaries. This itself shows that the plaintiff is not approached this court with clean hands and the plaintiff has failed to prove the cause of action of within the specific boundary. Hence, the plaintiff is not in possession of alleged schedule of proposed amendment. Hence, the application filed by the plaintiff is not tenable in the aforesaid grounds. Thus, prays to reject the application.

4. Head the arguments from both sides.

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

POINTS

1. Whether the plaintiff made out grounds to allow the IA No.IV to VI 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

Further cross of PW-1. The plaintiff seeking amendment in the plaint schedule as mentioned in the application. She contended that, the said amendment is necessary to prove her case. The said mistake came to her knowledge recently. In support of her application she also filed E- swathu document dated 09-02-2023.

8. This is the suit filed by the plaintiff for permanent injunction and she 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 her case by producing evidence.

9. The plaintiff sought the amendment in the northern side boundary of application schedule property but in the affidavit she sought southern side boundary same is over looped by this court has typographical error. To consider the contention of the defendants whether the plaintiff is not in possession of the schedule property cannot be considered at this stage. 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. However, the defendants have a chance to cross the PW.1. and to file amended written statement.

10. 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 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. The said amendment will not change the nature of suit and the right occurred to the defendants.

11. 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.**

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

ORDER

I A. No.IV to VI filed by the plaintiff U/o 6 rule 17 of CPC, Sec 151 of CPC and Under order 7 rule 14(A) of CPC are hereby allowed on cost of Rs.200/-.

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

**The PW-1 is recalled to
lead further chief exam.**

**For Amendment and for further
chief exam of PW-1**

Call on 30-01-2025.

(Dictated to the Stenographer, transcribed and computerized by
him, script corrected and then pronounced by me in Open Court on this
27th day of January 2025.)

**II Addl Civil Judge And Jmfc.
Channagiri.**

pronounced in the (vide separate order
open court)

ORDER

**IA No.I filed by
the defendant No.1 U/O
6 rule 17 of CPC., is
hereby dismissed with
cost.**

**For defendant
evidence finally.**

Call on 30-05-2024.

Jmfc.

Channagiri.

II Addl Civil Judge And

