



**IN THE COURT OF THE CIVIL JUDGE AND J.M.F.C.
NAVALGUND**

Present : Sri. Naveen F. Dsouza
B.B.A., L.L.B., (Spl).,
Civil Judge and JMFC., Navalgund.

Original Suit No.64/2024
Dated this the 27th day of March, 2026

Plaintiff : Sri. Kareemsab Budnesab Harlapur
Age: 63 years, Occ: Business
R/o: Navalgund, Taluk: Navalgund
Dist: Dharawad.
(By Sri.RMR-Adv.,)

Versus

Defendant : Sri. Babajan Mahammondsab Hanchinal
Age: 55 years, Occ: Business,
R/o: Navalgund (In front of Lingaraj Circle)
Taluk: Navalgund, Dist: Dharawad.
(By Sri. CMP-Adv.,)

PARTIES TO I.A.No.2

Applicant 1. Sri. Kareemsab Budnesab Harlapur
(Plaintiff)

Versus

Opponent 1. Sri. Babajan Mahammondsab Hanchinal
(Defendant)

ANNEXURES

i	Provision of application	U/o. 6 Rule 17 R/w Section 151 of CPC.
ii	Relief sought	Amendment.
iii	The date of application	17.10.2025
iv	Number of the application	2

v	The date of objections	19.02.2026
vi	The date of order	27.03.2026

**ORDER ON I.A.NO.2 FILED BY THE PLAINTIFF
UNDER ORDER 6 RULE 17 R/W SECTION 151 OF
CPC.**

The application of the plaintiff is coming for consideration under the provisions of Order VI Rule 17 of CPC, wherein the plaintiff has sought to substitute the extent of encroachment as pleaded in the plaint.

SYNOPSIS :

2. The plaintiff is before this court stating his possession and occupation over CTS No. 1557/A1/DA and that the suit property to be the portion of this land which is marked and identified as ABCD situated towards northern direction. That this property is stated to be bounded by CTS No. 1557/A1/DA towards east, and west, CTS No. 1557/A1/C. Towards north as well as south. That the suit property is stated to be purchased by the plaintiff. The defendant is stated to be the owner in occupation of CTS No. 15557/A1/C towards the northern direction of the land of the plaintiff.

3. That the defendant at the intersection point has encroached a portion of land of the plaintiff which is now identified as ABCD which is described to be of 21 square feet by the defendant. The portion of the encroached part or the suit schedule property is described as east-west 1 feet, north-south 21 feet, total 21 square feet. This description of the encroachment is sought to be substituted with 21 feet and north-south 1 feet.

4. On being summoned the defendant has tendered his appearance and has denied the claims of the plaintiff. The description of the suit property is called in question and it is alleged that the plaintiff himself has allegedly erected structures over the suit schedule property and has encroached the portion of the defendant which the plaintiff has erected without due process of law and he himself is liable for the legal consequences arose thereunder. That many correspondence has been made against the plaintiff. Hence sought for the dismissal.

5. The application stands opposed by the defendant, citing that the assertions made in the plaint have arisen as a defence to the defendant and the plaintiff cannot be permitted to take away the defence that has accrued in favour of the defendant. Further that the bonafide claim is not made and the application is filed only after the commencement of evidence or trial.

6. Having heard the rival contentions and on perusal of materials placed on record, this court has narrowed down the dispute to following points and they have been answered accordingly for the underlying reasons.

Sl. No.	Points	Answers
1.	Does the proposed amendment necessitate the determination of real matters in controversy?	In the Affirmative,
2.	Does the facts necessitates the incorporation?	In the Affirmative,
3.	What order?	As per final order, for the following;

REASONS

7. **Points No.1 and 2:-** The brief facts necessary for the adjudication of the application are already contained in the synopsis. That however in the affidavit accompanying the application it is stated that the description of the property has been mistakenly entered due to clerical mistake and when the total extent is already pleaded it is merely a clerical mistake which has come to the knowledge of the plaintiff after tendering evidence and the mistake being a latent effect could not have come to the knowledge of the plaintiff and has only come after a brief introspection of the pleadings. The proposed amendment is stated to be already available on record and would not change the nature of the suit.

8. To the contrary, the learned counsel for the defendant would argue that the nature of the suit would be changed as because the description of the suit property is itself incomplete and incorrect and when the suit is not maintainable for the mis-description of the suit properties, the same has to be taken into consideration and the suit ought to be dismissed. It is argued by the learned counsel for the defendant that the mis-description of the suit property having arisen as a defence to the defendant, the same cannot be tended to be taken away by amendment.

9. Having given consideration to the facts and the submissions the proposed amendment is likely to correct a clerical mistake which is just a substitution of the extent of the encroached portion and not introduction of a new facts. The pleadings are based upon the documents and even if the court denies the amendment, then the pleadings would be crippled because they would be contradictory to the documents that the plaintiff has relied upon. The relief that is claimed is mere

substitution of the portion of encroachment when the total extent is already pleaded. Hence the change or the substitution of the extent of encroachment will not in any way prejudice the defendant.

10. Moreover, the cross of the plaintiff has not been commenced. That however, the application is filed only after the commencement of evidence. As rightly submitted by the counsel for the plaintiff, the sought for amendment is a latent defect which is not visible to a bare eye and would require a brief introspection. Hence, this Court opines that there is a bona fide claim made. So far as the apprehension of the defendant is concerned as to the delay, the same could be meted out by imposition of time bound directions and also imposition of costs. Accordingly the **Points No. 1 and 2 are affirmed.**

11. **Point No.3:-** In the result the following;

ORDER

*The I.A.No.2 filed by the plaintiff under Order VI Rule 17 R/w. Section 151 of CPC., is hereby allowed on cost of **Rs.200/-** as condition precedent.*

The plaintiff to carry out the amendment and furnish amended plaint within 10 days, failure to which the amendment shall be struck.

For compliance, call on :

*(Typed and transcript revised by me, formatted by the steno, corrected and then pronounced by me in the open Court on this **27.03.2026**).*

(Naveen F. Dsouza)
Civil Judge and J.M.F.C.,
Navalgund.

