

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

Original Suit No.239/2021

Dated this the 28th day of August, 2025

Present : Sri. Naveen F. Dsouza

B.B.A., L.L.B., (Spl).,

Civil Judge and JMFC., Navalgund.

Plaintiff : 1. Mallappa A/F. Rudrappa Talawar,
Age: 62 years, Occ: Agriculture,
R/o. Gobbargumpi, Tq: Navalgund,
Dist: Dharwad.

(By Sri. MSH, Advocate)

Versus

Defendants : 1. Amrutappa S/o. Hanamantappa Talawar,
Age: 67 years, Occ: Agriculture,
R/o. Gobbargumpi, Tq: Navalgund,
Dist: Dharwad & another.

(By Sri. VTK, Advocate)

PARTIES TO I.A.NO.4&5

Applicants : Mallappa A/F. Rudrappa Talawar

Versus

Opponents : Amrutappa S/o. Hanamantappa Talawar &
others.

ANNEXURE

i	Provision of application	1) I.A.No.4- U/O.11 Rule 14 R/w. Section 151 of CPC (D1) 2)I.A.No.5- U/O.6 Rule 17 R/w. Section 151 of CPC (Plaintiff)
ii	Relief sought	1)I.A.No.4-Leave sought to produce original document 2)I.A.No.5-Amendment of plaint
iii	The date of application	1)I.A.No.4-29.03.2025 2)I.A.No.5-13.06.2025
iv	Number of the application	I.A.No.4 & I.A.No.5

v	The date of objections	1)I.A.No.4-29.04.2025 2)I.A.No.5-24.07.2025
vi	The date of order	28.08.2025

**ORDERS ON I.A.No.4& 5 FILED BY THE PLAINTIFF&
DEFENDANT NO.1**

The I.A.No.5 is coming for disposal before this court under the provisions of order VI Rule 17 wherein the plaintiff has sought to substitute the term **gift** with **will** at plaint para No.4.

SYNOPSIS:

2. The plaintiff is before this court seeking to declare his absolute ownership over the suit property described as ABCD in the hand sketch annexed with the plaint and further to restrain the defendant in perpetuity from obstructing the possession of the plaintiff over the suit property.

3. The plaintiff through the application has sought for amendment stating in the affidavit accompanying the application it is pleaded that, due to oversight and due to typical error the term gift has been mentioned in the entire pleading instead of the term will. Hence, the term gift is sought to be incorporated as will citing that the amendments are necessary and if it is not allowed it would prejudice the plaintiff.

4. The application is opposed by the defendants on the grounds that the sought amendment if allowed would change the nature of the suit, that the reason for amendment is not mentioned and that the plaintiff has procured a order of injunction on the basis of incorrect description of suit schedule property and if the amendment is allowed the Defendant would be prejudiced as the

defence of gift is different from the defence will. Hence, sought for the dismissal of the application.

5. Having heard the rival submission and on perusal of the materials placed on record, the following points arise for the consideration of this court;

Sl. No.	Points	Answers
1	Whether the amendment sought is imperative for proper and effective adjudication of the case?	In the Affirmative,
2	Whether the application for amendment is bonafide?	In the Affirmative,
3	Whether refusing amendment would in fact lead to injustice or lead to multiplicity of litigation?	In the Affirmative,
4	Whether the proposed amendment fundamentally changes the nature and character of the case?	In the Negative,
5	Can the proposed amendment be allowed without causing prejudice to the other side and be compensated adequately in terms of money?	In the Affirmative,
6	What order?	As per final order, for the following;

REASONS

6. **Point No.1 to 5:-** Since all these points are interrelated they are taken up together for discussion. Facts germane for the determination of these points are as follows;

7. The plaintiff has pleaded that he is the absolute owner, in occupation and possession of the suit schedule property as it has devolved upon him through adoption by his adoptive father. That the defendant being the adjacent owners have been obstructing the plaintiff in his possession and occupation of the suit schedule property and hence he has filed the suit for injunction.

8. The suit is opposed by the defendants by denying the title of the Plaintiff over the suit schedule property and have pleaded that the suit schedule property is not in existence and the description of suit schedule property is infactually the two properties of the defendants which the plaintiff has clubbed and the suit is filed falsely.

9. This court has been pleased to frame the issues and the substantial burden is upon the defendants. It is now that the plaintiff has come up with the application seeking amendments. The pleadings revolve around the fact of declaration of ownership of the plaintiff. The plaintiff has to establish his ownership with the best means available.

10. It is the assertion of the learned counsel for the defendants that if the amendment is allowed then it would change the nature of the suit as the relief founded on the basis of a will would differ from the relief founded upon a will. Certainly the proposition seems to be pleasing but when the plea of the plaintiff is considered on objective satisfaction, what ensues is that the Plaintiff has to prove his ownership be it by succession, by purchase or by any other recognized form of devolution of title.

11. The question of oscillating the defence based on the devolution of title either by will or gift would apply to the suit between the family members. In the present case the parties are

strangers to each other. This court would also consider the contrasting situation which would ensue on the refusal of the application. If the relief is declined the plaintiff will have to either withdraw the suit or be crippled to prosecute the matter, because the plaintiff is solely relying upon the document as a primal source of his title.

12. If the application is allowed the defendant could file their additional written statement perhaps they could lay their additional defence. Moreover the defendants have denied the title of the Plaintiff and if the plaintiff intends to prove it either by will or gift, it should not be prejudicial to the defendants because in either situation the defendants would have their right to cross examine the plaintiff.

13. One pertinent fact to be taken into consideration is the memo dated 22.10.2021 wherein the learned counsel for the defendants have adduced a certified copy of the will dated 11.04.1997. Initially the suit has been instituted as a injunction simplicitor. In the due course through the amendment a total of 6 amendments have come to be incorporated. The term gift has come to be incorporated in the plaint at the application of the Plaintiff.

14. The disheartening fact which haunts the judicial conscience is the carelessness of the plaintiff and also constrains the court to be harsh and move a step forward to also notice the redundant nature of the counsel for the plaintiff for being negligent in filing an application for amendment without securing proper documentation and information.

15. The reckless nature of the plaintiff is forthcoming but this court should strive for the ending of the lis once and for all by

advancing equal opportunities to the rival sides. The plaintiff has had sufficient opportunity to verify the pleadings. The fact of misplaced term has only come to the knowledge of the Plaintiff when an application seeking to produce the gift deed was submitted. If the application hadn't been filed the same would have carried on till the cross examination.

16. It is an acknowledged fact that the plaintiff is legal illiterate but it is also to be acknowledged that the existence of a will was well reported to the court way back on 22.10.2021. Till the day of this application neither the plaintiff nor the counsel for the plaintiff has been diligent in giving attention to that document.

17. The defendant has filed the application for the production of documents. They intend to direct the plaintiff to produce the gift deed. On perusal of the materials it is infact a will and not gift.

18. This court obliged to not to comment on any aspect but when it comes to the fate of the lis being affected by a rather silly mistake, it is certainly an injustice inflicted by the learned masses. The learned counsel for the defendant has argued with force that the proposed incorporation of the relief of declaration if allowed would change the nature of the suit and cause prejudice to the defendant as it is likely to take away the right accrued in favour of the defendants.

19. The proposed incorporation of the relief of declaration is an substantial question of law that requires a considerable discussion. In this regard both the counsels have set out their submission in length. The learned counsel for the defendants has argued that the suit initially for injunction simplicitor has been amended to declaration and now is sought to be implicated as a

suit founded on will. It is the assertion that since the inception the plaintiff has been reaping the benefit of the T.I. on the basis of incorrect pleadings.

20. It is also argued that the incorporation of the proposed amendment that the suit schedule property has been bequeathed to the plaintiff by his adoptive father along with the adoption deed and a relief of declaration upon the same would be totally barred by the law of limitation. Further that a suit founded on gift would stand differentiated on a suit founded on bequest wherein the defendant in this case has taken up a stance and the defence that has accrued in the favour of the defendants cannot be defenestrated by the amendment.

21. One important note, in the application it is stated that the plaintiff has received the property from his adoptive father by way of registered adoption deed and also by the registered gift deed dated 11.04.1997. But in the plaint the adoption deed is stated to be executed on 11.04.1977, the same facts are not comprehensible.

22. Whether the proposed amendment changes the fundamental character of the suit is the question that has to be considered. Without going to the merits of the case, this court has scrutinized the cause of action. In the plaint it is pleaded that the plaintiff is in the possession of the suit schedule property and the defendants have been obstructing the plaintiff's possession on the ground that the suit schedule property belongs to the defendants.

23. The cause of action has accrued when the defendant has caused the interference and obstruction. The question now that arises is whether the proposed amendment has taken the

defendant by surprise and the answer would be no. Because the plaintiff in his pleadings has stated the fact that the defendants have denied his ownership and in such a case the declaration is of ownership be it gift or will, the burden is on the plaintiff.

24. Another aspect this court has considered is whether the proposed amendment would be sufficient for the inception of a new suit. This aspect is already discussed above. Perhaps in the circumstance if the amendment is permitted what necessarily could follow is framing of appropriate issue with the respective burden being cast thereupon and the rival parties taking their opportunities to put to test the veracity of the evidence and as far as the delay is concerned the same could be compensated with costs.

25. Indeed the defendants are at advantage and would be at disadvantage after the amendment but more than the quantum of advantage of disadvantage this court has to strive for the purpose of bringing an end to the litigation. This court has the obligation to secure the proper administration of justice, and it is therefore essential that the grant of amendments has to be liberally construed.

26. The balance has to be stricken with faulty pleadings and abuse of process of law. The proposed amendment involves a substantial question of law and the suit cannot be proceeded without allowing the amendment as the plaintiff would not be able to procure the same quantity of relief without the amendment.

27. The proposed amendment are not intending to change the nature of the suit and also would not be prejudicial to the opposite side. The defendants have the advantage of putting to test the veracity of the case of the Plaintiff in the course of trial. The

grant of proposed amendment has not constrained this court to sweep away from the scope of the provision order 6 rule 17 from the legislative intent. Hence, for the above discussions, the **point no.1 to 3 and 5** are answered in the **Affirmative** and the **point no.4** is answered in the **Negative**.

28. **Point no.6:** Accordingly, this Court proceed to pass the following;

ORDER

The I.A. No.5 filed by the plaintiff under Order VI Rule 17 R/w. Section 151 of C.P.C., is hereby allowed subject to payment of cost of Rs.2,500/- to TLSA Navalgund and Rs.500/ to the Defendant, which shall be condition precedent.

*The plaintiff is permitted to make the amendment by substituting the term **gift** with **will** as sought for and furnish the amended plaint.*

*In view of the order on I.A.No.5, the I.A.No.4 would not stand for consideration. Hence, I.A.No.4 is **rejected**.*

(Dictated to the stenographer, transcribed and typed by her, the transcript revised, corrected and then pronounced by me in the Open Court on this **28.08.2025**)

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