

KAHS710019902021



**IN THE COURT OF PRINCIPAL CIVIL JUDGE & JMFC AT
HOLENARASIPURA**

PRESENT : SMT. CHETHANA B.A., L.L.B.,
Prl.Civil Judge & JMFC,
Holenarasipura.

O.S.No.233/2021

Dated this the 26th day of NOVEMBER-2025

Plaintiff/s:- Vishalakshi,
W/o. B.D. Annaiah,
Aged about 38 years,
R/at: DoddakuncheKoppalu Village,
Halekote Hobli,
Holenarasipura Taluk,
Hassan District.

(By Sri. N.Y.K, Advocate)

-V/s-
Defendants:- 1. Chikkegowda,
S/o. Kalegowda,
Aged about 70 years,

2. Shankara,
S/o. Chikkegowda,
Aged about 38 years,

Both are R/at:
DoddakuncheKoppalu Village,
Halekote Hobli,
Holenarasipura Taluk,
Hassan District.

(Def. Nos.1 and 2 by Sri.R.D.R, Adv.)

Parties to IA No. VII

Applicant/s : Vishalakshi

-V/s-

Opponents : Chikkegowda & Another

**ORDERS ON I.A.NO.VII FILED UNDER ORDER VI RULE 17 OF
CRIMINAL PROCEDURE CODE**

This application is filed by the applicant/plaintiff under Order VI Rule 17 of C.P.C. seeking to amend the plaint as stated in the application. The applicant has sought to amend the plaint as follows:-

“ವಾದ ಪತ್ರದ 3ನೇ ಪ್ಯಾರದ 13ನೇ ಸಾಲಿನ ಮನೆಯನ್ನು ನಿರ್ಮಾಣ ಮಾಡಿರುತ್ತಾರೆ. ಆದ ನಂತರ ಅಸಲು ದಾವಾ ನಂ.240/2021 ರಲ್ಲಿ ದಾವಾ ಸ್ವತ್ತಿನ ಸಂಬಂಧ ದಾವ ಸ್ವತ್ತನ್ನು ಅಳತೆ ಮಾಡಲು ನ್ಯಾಯಾಲಯದ ಆಯುಕ್ತರು ನೇಮಕವಾಗಿ ವರದಿಯನ್ನು ಸಲ್ಲಿಸಿದ್ದು, ಸದರಿ ವರದಿಯಲ್ಲಿ ಪ್ರತಿವಾದಿಯರು 0-2 3/4 ಗುಂಟೆ ಪ್ರದೇಶವನ್ನು ವತ್ತುವರಿ ಮಾಡಿ ಮನೆಯನ್ನು ನಿರ್ಮಿಸಿರುತ್ತಾರೆ. ಪ್ರತಿವಾದಿಯರು ವತ್ತುವರಿ ಮಾಡಿ ನಿರ್ಮಿಸಿರುವ ಮನೆಯನ್ನು ತೆರವುಗೊಳಿಸುವಂತೆ ವಾದಿಯು ಪ್ರತಿವಾದಿಯರನ್ನು ಕೇಳಲಾಗಿ ಪ್ರತಿವಾದಿಯರು ವತ್ತುವರಿ ಮಾಡಿ ನಿರ್ಮಿಸಿರುವ ಮನೆಯನ್ನು ತೆರವುಗೊಳಿಸಿರುವುದಿಲ್ಲ ಎಂದು ಹಾಗೂ ವಾದ ಪತ್ರದ 3ನೇ ಪ್ಯಾರದ 17ನೇ ಸಾಲಿನಲ್ಲಿ ಪ್ರತಿವಾದಿಗಳ ವಿರುದ್ಧ ಎಂಬುದರ ಮುಂದೆ ಘೋಷಣೆ ಹಾಗೂ ಅಜ್ಞಾಪಕ ನಿಬಂಧಕಾಜ್ಞೆ ಎಂದು ಸೇರ್ಪಡೆಗೊಳಿಸಬೇಕಾಗಿಯೂ ಹಾಗೂ ವಾದ ಪತ್ರದ ಪ್ರಾರ್ಥನೆಯಲ್ಲಿ 1ನೇ ಸಾಲಿನ ನಂತರ ವಾದಿಯೇ ದಾವ ಸ್ವತ್ತಿನ ಮಾಲೀಕರೆಂದು ಘೋಷಿಸಬೇಕಾಗಿಯೂ, ಹಾಗೂ ಪ್ರತಿವಾದಿಯರು ದಾವ ಸ್ವತ್ತಿನಲ್ಲಿ

ವತ್ತವರಿ ಢಾಡಿ ನಿರ್ಮಿಸಿರುವ **0-2 3/4** ಢನೆಯನ್ನು ಅರ್ಜಿಪಕ ನಿಬಂಧಕಾರ್ಜಿಯ ಆದೇಶದ ಢೂಲಕ ತೆರೆವುಗೊಳಿಸಬೇಕಾಗಿಯೂ ಂದು ಸೇರ್ಪಡೆಗೊಳಿಸಲು " .

2. In the affidavit annexed to the application, it is stated that, in O.S.No.240/2021, the Court Commissioner has submitted report stating that, the defendants have encroached 2.08 guntas of property in the suit schedule property and constructed house. Therefore, it is necessary that, the plaint has to be amended accordingly. If the application is not allowed, the plaintiff would be put to irreparable loss and injury. If the application is allowed, the nature of the suit will not be changed and it will not give raise to new cause of action. Hence, it is prayed to allow the application.

3. The Defendants have filed objections to the application by contending that, if the plaintiff is allowed to amend the plaint as sought, there is the possibility of change in the nature of the suit. Since no cause of action arose prior to the institution of the suit, the suit is not maintainable. Therefore, there is no question of allowing the plaintiff to amend the plaint as sought in the application. The plaintiff has sought to declare her as the absolute owner and also sought the relief of mandatory injunction. However, there is no pleading as to when she came to know about these facts. Therefore, it is not lawful to permit the

plaintiff to amend the plaint. If the application is allowed, the defendants would be put to irreparable loss and injury. On these grounds, it is prayed to dismiss the application.

4. On the basis of rival contentions, the following points arise for the consideration of this Court:

1. Whether the applicant has made out grounds to allow the application?
2. What order?

5. The answer of this Court to the above points are as under:

Point No.1: In the Affirmative

Point No.2: As per final order for the following:

REASONS

6. Point No.1: This suit is filed seeking the relief of permanent injunction against the defendants. The applicant has sought proposed amendment to the plaint. Per contra, the defendants have objected the amendment by filing objections.

7. It is one of the well settled principles of law that, the purpose and object of Order 6 Rule 17 of the Code of Civil Procedure is to allow either party to alter or amend his pleadings in such manner

and on such terms as may be just. Amendment cannot be claimed as a matter of right and under all circumstances, but the courts while deciding such prayers should not adopt a hyper-technical approach. Liberal approach should be the general rule, particularly in cases where the other side can be compensated with costs. Normally, amendments are allowed in the pleadings to avoid multiplicity of litigations.

8. In this case initially, the plaintiff has filed this suit for injunction simpliciter. Thereafter, the plaintiff has come up with this application seeking to include certain additional facts and also to include prayer of declaration title and mandatory injunction. But, on the contrary, the defendants have contended that, if this application is allowed and the plaintiff is permitted to amend the plaint as sought in the application, it will give rise to new cause of action and change the nature of the suit. The Hon'ble High Court of Karnataka in the case of ***Sri.Muniyappa V. Smt.Indrani and others*** in Writ Petition **No.52784/2016(GM-CPC)** disposed off on 17.10.2017 at paragraph No.13 is has been held as under:

13. *It is well settled that a suit for permanent injunction can be converted into declaration of title at any stage on the basis of the same set of pleadings. In the application for amendment, the petitioner/plaintiff sought prayer permitting him to*

amend the prayer column of the plaint declaring that he is the absolute owner of the suit schedule property based on the same set of pleadings originally pleaded in the plaint. Mere allowing the prayer to the effect that the plaintiff is the absolute owner of the suit schedule property based on the same set of pleadings will not change the nature of the suit and no prejudice will be caused to the defendants. It is the case of the defendants that the plaintiff has to establish his title and possession over the suit schedule property based on the oral and documentary evidence to be adduced and produced by both the parties. It is always open for the defendants to file additional written statement, if any, denying the contentions raised in the application for amendment.

Therefore, it is settled law that, the suit for permanent injunction can be converted into declaration of title at any stage on the basis of same set of pleading. Under such circumstances, in the case on hand, the amendment sought to be carried out by the plaintiff seems to be bonafide, legitimate and necessary for the purpose determining the real questions in controversy between the parties. Moreover, the heavy burden lies on the plaintiff to prove her title over the suit schedule property by adducing substantial evidence. Merely permitting the plaintiff to amend the plaint to include the relief regarding ownership, does not mean that the plaintiff has proved his case. Whatever the contentions taken up by the plaintiff has to be proved on his own. Therefore, if this application is allowed no prejudice will be caused to the other side as the defendants will get opportunity to

file additional written statement. Therefore, by considering the pleadings, documents on record, contents of affidavit and objections filed, for the reasons stated supra, the applicant/plaintiff has made out grounds to allow the application. Accordingly, point No.1 is answered in the **Affirmative**.

9. Point No. 2: For the reasons stated while discussing point No.1, this Court proceed to pass the following;

ORDER

I.A.No.VII filed by the applicant under Order VI Rule 17 of CPC is hereby allowed.

No order as to costs.

(Dictated to the stenographer directly on to the computer typed by her, transcript revised, corrected and then pronounced by me in the open court on this the **26th day of NOVEMBER- 2025**)

**(Smt.Chethana)
Prl. Civil Judge & JMFC
Holenarasipura.**

(Order is pronounced in the open court vide separate order)

I.A.No.VII filed by the applicant under Order VI
Rule 17 of CPC is hereby allowed.

No order as to costs

For amendment of plaint and filing amended plaint