

**IN THE COURT OF THE CIVIL JUDGE & J.M.F.C.,**  
**HANGAL**

**PRESENT: Sri. Janardhana. S.K. B.A.L., LL.B.,**  
**Civil Judge & J.M.F.C.,**  
**Hangal.**

**O.S.No.312 of 2018**

**DATED THIS THE 16<sup>th</sup> DAY OF APRIL 2025**

**Plaintiff :** Mohammed Jafer S/o Abdul Ganisab Mulla

**(By Sri.N.A.Baichavalli – Adv.)**

**V/s.**

**Defendant :** Chamansab S/o Abdul Ganisab Mulla

**(By Sri.M.M.Mulla – Adv.)**

**PARTIES TO I.A.No.IV**

**Applicant/**

**Plaintiff:** Mohammed Jafer S/o Abdul Ganisab Mulla  
Age: 56 years, Occ: Agriculturist  
R/o: Adur village, Tq: Hangal, Dist: Haveri.

**- V/s -**

**Opponent/**

**Defendant:** Chamansab S/o Abdul Ganisab Mulla  
Age: 71 years, Occ: Agriculturist  
R/o: Adur village, Tq: Hangal, Dist: Haveri.

|     |                                                               |                           |
|-----|---------------------------------------------------------------|---------------------------|
| I   | Provision under which the application is filed                | U/o.VI Rule 17 of C.P.C., |
| II  | Relief sought for                                             | For amendment of plaint   |
| III | Date on which the application is filed                        | 11-07-2022                |
| IV  | Number of application                                         | I.A.No.IV                 |
| V   | The date of which objections filed by the different opponents | 06-08-2018                |
| VI  | Date on which the orders were passed on said application      | 16-04-2025                |

**(Sri. Janardhana. S.K.)**  
**Civil Judge & JMFC.,**  
**Hangal.**

### **ORDER ON IA.NO.IV**

The applicant/plaintiff has filed this application U/o.VI Rule 17 of C.P.C seeking amendment of plaint in terms of schedule to the application.

2. In the affidavit annexed to the application, the applicant/plaintiff deposed to the facts that he has filed this suit for permanent injunction in respect to suit schedule properties and at the time of institution of suit by oversight and mistake measurement of the suit schedule properties wrongly mentioned and therefore, same is not intentional

one and bonafide reasons. On said grounds, it is prayed to allow the application.

3. This application is resisted by counsel for the defendant by filing objections inter alia among various grounds. It is contended in the objections that the application is not tenable either in law and facts and facts stated in the affidavit are all false and frivolous and no grounds made out seeking proposed amendment and same is after commencement of trial. Moreover, the proposed amendment would change the nature of the suit and measurement of the suit schedule property which goes to very root of the case. On said grounds, it is prayed to dismiss the application with costs.

4. Heard the arguments of counsel for the plaintiff and defendant. Perused entire materials available on record at this stage.

5. The points that would arise for consideration of this court are as follows:-

**POINTS**

***1. Whether the proposed amendment is necessary for proper and complete adjudication of the suit?***

***2. What order?***

6. The findings of this court on aforesaid points are as follows:-

***Point No.1 : In the affirmative.  
Point No.2 : As per final order  
for following:-***

**REASONS**

7. **Point No.1**:- Apparently, the plaintiff has filed this suit against the defendant for the relief of permanent injunction to restrain the defendants or anybody acting under him from interfering in peaceful possession and enjoyment of A and B suit schedule properties. As indicated earlier, by way of proposed amendment the plaintiff sought to amend and insert correct measurement of “A” and “B” suit schedule properties as against existing measurement of the suit schedule properties in the plaint schedule including to substitute nature of house situated in the suit schedule property in the form of zinc sheet house as against tiled house in the said suit schedule properties.

8. As objected by the counsel for the defendant, no doubt, already evidence of plaintiff commenced and the present application seeking proposed amendment apparently filed when the case is for cross examination of PW-1. It is true that, the plaintiff ought to have introduce the proposed amendment much prior to commencement of

trail and at the same time, this court cannot disregard the fact that in suits for permanent injunction, the correct measurement of the suit schedule properties to decide actual possession thereof is a material fact. Therefore, unless the applicant is permitted to plead or state actual measurement of the suit schedule property as per proposed amendment, very purpose of the filing the suit would be defeated and suit cannot be adjudicated finally and effectively.

9. In the aforesaid context, it is worth to note that mere inclusion of different or higher extent of suit schedule property ipso facto does not prove the case of the plaintiff and at the end, the plaintiff is required to establish possession of the suit schedule property as per measurement sought to be incorporated by way of proposed amendment. If the plaintiff with cogent oral and documentary evidence fails to establish actual possession of the suit schedule property in terms of measurement sought to be incorporated by way of proposed amendment, he would be non-suited or his suit would be dismissed. Even otherwise, the defendant is at liberty to dispute aforesaid extent of the suit schedule properties during course of cross examination of PW-1 and trail. Therefore, the considered opinion of this court is that proposed

amendment is necessary for proper and effective adjudication of suit and moreover, the proposed amendment no way change the nature of the suit. Accordingly, point No.1 is answered in the affirmative.

10. **Point No.2**:- In the light of aforesaid reasons and discussions, this court has proceed to pass following:-

**ORDER**

***I.A.No.IV filed U/o.VI Rule 17 of C.P.C,  
is hereby allowed on cost of Rs.200/-.***

***Consequently, the plaintiff counsel  
is hereby directed to amend the plaint in  
terms of I.A.No.IV.***

***For amendment and to furnish  
amendment plaint by 22-04-2025.***

*(Dictated to the Stenographer, typed by him, once corrected, later initialed by me and then pronounced by me in the open court on this the 16<sup>th</sup> day of April - 2025)*

**(Sri.Janardhana. S.K.)  
Civil Judge & JMFC.,  
Hangal.**