



**IN THE COURT OF THE CIVIL JUDGE AND JUDICIAL
MAGISTRATE FIRST CLASS, SAVANUR.**

PRESENT : **Sri. Srinivasa. S. N,**
B.A., LL.M.,
Civil Judge and JMFC.,
Savanur.

O.S.No.28/2015

Dated this 17th day of July, 2025

PLAINTIFFS: Shambhugouda S/o Basavantappagouda Patil
& others

Vs

DEFENDANTS: Smt. Sharada W/o Basaravaj Hiremath and
others

IA No.XI

Applicants: Rudragouda S/o Bangareppagouda Patil
(Defendant) & others

Vs

Opponent: Shambhugouda S/o Basavantappagouda Patil
(Plaintiff)

i	Provision under which the application is filed	Under Section 151 of the CPC
ii	Relief sought for	Permission to amend the affidavit in lieu of examination-in-chief already filed by Defendant No.3 as DW-1.
iii	The date on which the application is filed	15-02-2023
iv	The date on which the objections are filed by different opponents	02-03-2023
v	The date on which the orders were passed on the said application	17-07-2025



ORDER ON IA NO.XI

The defendants No.2, 3, and 5 have filed the present application under Section 151 of the CPC seeking permission to amend the affidavit in lieu of examination-in-chief already filed by Defendant No.3 as DW-1. It is submitted that due to typographical errors, certain property numbers have been incorrectly mentioned in the affidavit specifically in para 4 of the affidavit 21/C has been wrongly written as 2/c and 22A/1, 22A/2, 21/C and 21/C1 have been mistakenly entered as 22/A and 22/C. Therefore, in order to rectify these mistakes and file a correct version of the affidavit, the defendants seek permission to submit a fresh affidavit, in the interest of justice and equity.

2. In the accompanying affidavit, the defendant No.3 has submitted that the affidavit filed as DW-1 by the him contains some inadvertent typographical mistakes. The DW-3 is has not yet been subjected to cross-examination. Therefore, to ensure that the correct version is placed on record and to avoid any confusion, it is just and necessary to permit the withdrawal of the said affidavit and allow the defendants to file a revised examination in chief affidavit. Therefore the defendants prays to allow the application.



3. Per contra the plaintiff has filed objections to the application contending that once an affidavit is filed as evidence, the same becomes part of the record and cannot be withdrawn. It is also contended that the application is not maintainable and is an attempt to fill up lacunae in the evidence. Further contended that as per Order 6 Rule 17 of CPC, only plaint and written statements are permitted to amend but not the evidence affidavit. Therefore, the plaintiff prays to reject the application with exemplary costs.

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

POINTS

1. ***Whether the applicants/defendant No.2, 3 and 5 have made out sufficient grounds to allow the application?***
2. ***What order?***

5. 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:-

6. **POINT No. 1:-** The plaintiff has filed the present suit against the defendants seeking for the relief of declaration and permanent injunction in respect of the suit property. The



defendants No.2, 3 and 5 have filed this application under Section 151 of the Code of Civil Procedure seeking permission to amend the affidavit in lieu of examination-in-chief already filed by Defendant No.3 as DW-1 and to file a fresh affidavit. It is submitted that there are some typographical errors in the earlier affidavit specifically in para 4 of the affidavit 2/C has been wrongly written as 21/c and 22A/1, 22A/2, 21/C and 21/C1 have been mistakenly entered as 22/A and 22/C and therefore, seeks permission to file correct affidavit in the interest of justice and equity.

The defendants No.2, 3 and 5 counsel has relied on the decision of **Hon'ble High Court of Jharkand, passed in Om Prakash Agarwal Vs. Smt.Sudha Agarwal**, wherein the Hon'ble Court has held in para 11 to 13 as under:-

“11. This Court finds that the learned counsel for the plaintiff has relied upon the judgment passed by Hon'ble Andhra Pradesh High Court in the case of "Sri Mohammed Abdul Ahmad Vs. Sri Mohammed Abdul Gafoor @ Ahmed and another" reported in 2013 AIR CC 745 (AP). Relevant portion of the said judgment is quoted as under:

"The question as to when an affidavit filed, in lieu of chief- examination would form part of record, was dealt with by a Full Bench of this Court in RITA PANDIT v. ATUL PANDIT. The judgments of the Supreme Court in SALEM



ADVOCATE BAR ASSOCIATION, TAMIL NADU v. UNION OF INDIA and AMEER TRADING CORPORATION LTD., v. SHAPOORJI DATA PROCESSING Ltd., apart from the judgments rendered by the High Courts of Kerala and Bombay, were discussed at length. The Full Bench summed up its observations in paragraph 24, as under:

"An affidavit is merely an affidavit when it is filed in the Court. But when a witness appears for cross-examination, it is necessary for the witness either to confirm or differ with the contents of the affidavit. After his confirmation or denial of the contents of affidavit, whatever recorded is the evidence and if the witness confirms the affidavit, the affidavit would become part of the statement made by the deponent before the Court. Therefore what is finally taken as evidence by the Court is not the affidavit, but what is contained in the affidavit, if confirmed by the deponent when he appears before the Court for cross-examination....."

12. Considering the ratio of the judgment passed by the Hon'ble Andhra Pradesh High Court, this Court is also of the considered view that the Evidence-in-Chief on affidavit can be said to have been taken on record only when the concerned witness appears before the court for the purposes of confirmation of his Evidence-in-Chief on affidavit and exhibit, if any, is marked. Unless this stage comes, the Evidence-in- Chief on affidavit merely remains an affidavit and cannot be said to have been taken on record.

13. This Court further finds that it is the specific case of the plaintiff that the error had



crept up in Evidence-in-Chief on affidavit filed on 28.10.2016 with regard to certain dates as mentioned above and which are said to be supported by documents and is sought to be rectified by filing fresh Evidence-in-Chief on affidavit dated 18.11.2019 and there is no such dispute in connection with this argument of the plaintiff. Accordingly, this Court is of the considered view that the Evidence-in-Chief on affidavit filed on 28.10.2016, having not yet been taken on record, is to be replaced pursuant to the present interlocutory application and the corrected Evidence- in-Chief on affidavit of the applicant witness No. 1 filed on 18.11.2019 be considered for the ends of justice. Accordingly, the I.A. No. 10594 of 2019 is hereby allowed and the corrected Evidence-in-Chief on affidavit of the applicant witness no. 1 filed on 18.11.2019 will be considered in place of Evidence-in-Chief on affidavit filed on 28.10.2016.”

7. On perusal of the application, the affidavit, and the rival submissions, this Court is of the considered opinion that it is not in dispute that the affidavit of DW-1 by Defendant No.3 has been filed, but his cross-examination has not yet commenced. At this stage, the evidence is not complete. The affidavit in lieu of chief-examination is treated as examination-in-chief only when the witness enters the witness box and is subjected to cross-examination.



8. It is also a settled legal position that the Court has inherent powers under Section 151 of CPC to permit correction or substitution of an affidavit where necessary to meet the ends of justice, especially when cross-examination has not yet commenced. The court must balance technicalities with justice, and should allow a party to correct typographical or clerical errors when it does not cause prejudice to the other side.

9. Further, the application does not seek to alter the nature of the evidence but for the rectification of typographical errors. The Court has inherent power under Section 151 CPC to permit such rectification or substitution of affidavit, especially when no prejudice is caused to the other side. The plaintiff will have full opportunity to cross-examine the witness on the fresh affidavit, and therefore no prejudice will be caused to the plaintiff.

10. As such, the objections raised by the plaintiff are not sustainable. The application is only to correct typographical errors and not to amend pleadings or introduce new claims.

11. Order VI Rule 17 of CPC is reads as follows;

Amendment of pleadings.—The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary



for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

Section 3 (2) of Karnataka Civil Rules of Practice-1967 reads as follows;

"Pleadings" shall include complaints, written statements, memorandum of appeals, cross-objections, original petitions, applications, counter statements, replies, rejoinders and every statement setting out the case of a party in the matter to which the pleadings relate.

12. The plaintiff contended that affidavits cannot be amended as per Order VI Rule 17 CPC. Order VI Rule 17 of CPC applies to pleadings and not to affidavits filed in lieu of evidence. As per Section 3(2) of the Karnataka Civil Rules of Practice, 1967, "pleadings" do not include affidavits in lieu of chief-examination. Hence, the bar under Order VI Rule 17 is not applicable in the present case. The amendment sought is procedural and does not affect the rights of the plaintiff. In view of the aforesaid reasoning and discussions, it is clear that the application filed by the defendants no.2, 3 and 5 deserves to be allowed. Accordingly, this Court has answered ***point No.1 in the Affirmative.***



13. POINT NO.2:- For the foregoing reasons, I proceed to pass the following;

ORDER

The IA No.XI filed U/Section 151 of CPC by the defendants no.2, 3 and 5 is hereby allowed on cost of Rs.500/-.

The defendants no.2, 3 and 5 are permitted to withdraw the affidavit in lieu of examination-in-chief filed by Defendant No.3 as DW-1, and are granted liberty to file a fresh affidavit.

(Dictated to the stenographer on computer, corrected, signed and then pronounced by me in the Open Court on this the 17th day of July, 2025)

(SRINIVASA.S.N)
Civil Judge & JMFC.,
Savanur.