

ORDER ON I.A. FILED U/O. 6 RULE 17 OF CPC BY THE
PROPOSED PLAINTIFF

The present suit is for perpetual injunction against the defendants from putting up construction by blocking public road touching to the suit property. The plaintiff herein has filed an application under Order 6 Rule 17 stating that the defendants have highhandedly constructed their house and therefore now is intending to amend is suit and make additions in prayer for mandatory injunction.

2. The defendants have submitted their objection to the said application stating that after obtaining permission from the Gram Panchayath they have put up the construction and they have put up construction in their own property and not in the public property as averred by the plaintiff. Hence prayed to reject the application.

3. Perused the application and objection to the same and perused the materials available on record and the facts of the case. It is pertinent to note here that Order 6 Rule 17 provides for 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 amendment may be made as may be necessary for the purpose of determining real question in controversy between the parties.

4. Thus, the amendment to the pleadings is permitted at any stage of the suit.

5. Order 2 Rule 1 contemplates that every suit shall as far as practicable be framed so as to include the whole claim for final decision upon the subject in the suit and to prevent further litigation concerning them. In toto the suit should include whole claim.

6. In a judgment reported in (1996) 1 SCC 869, it is held that;

“ Rules of procedures are intended to be a handmaid to the administration of justice. A party can not be refused just relief merely because of some mistake, negligence and inadvertence or even infraction of the rules of procedure. The court always gives leave to amend the pleadings of a party, unless it is satisfied that the party applying was acting malafide,..... ”

“The power to grant amendment of the pleadings is intended to serve the ends of justice and is not governed by any such narrow or technical limitations”

7. Thus, in the instant case it is submitted by the plaintiff that the defendants subsequent to the filing of suit, has put up construction over the on public road and therefore he

intents to make amendment in his claim by including a specific prayer as to mandatory injunction against the defendants. Per contra the defendant claims that he has constructed in his own property. It is relevant to mention here itself that this court will come to know about defenses of the defendants only after the full fledged trial.

8. In view of the above authorities of the Apex Court and in view of the materials put forth by the plaintiff and defendants, to conclude the matters on merits by including whole claim of the parties and to serve the ends of justice by coming out of the narrow and technical limitations, it has becomes just and necessary to allow the application. Hence, I proceed to pass the following order:

ORDER

The application of plaintiff under Order 6 Rule 17 of CPC is hereby allowed.

For amending plaint and for filing amended plaint.

Call on

**ADDL.CIVIL JUDGE & JMFC,
ALAND**