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**IN THE COURT OF CIVIL JUDGE AND JMFC., JEWARGI.**

**Present:- Sri.Kashinath V. Uppar, B.Sc., LL.B.,  
Civil Judge and JMFC,  
Jewargi.**

**Dated : This the 9<sup>th</sup> day of August-2024**

**O.S.No.16/2021**

**Between:****: Plaintiff**

Lakappa s/o Irappa @ Iranna,  
Age: 40years, Occ: Agriculture,  
R/o Naribol, tq: Jewargi,  
Dist: Kalaburagi.

**(By Sri. Laxmikant Kulkarni. Adv.,)**

V/s

**: Defendants**

1. Haji S/o Maheboob Ali,  
Age: 50 years, Occ: Hotel Business,
2. Yousuf S/o Maheboob Ali,  
Age: 45years, Occ: Kirana Business,
3. Moula S/o Maheboob Ali,  
Age: 30 years, Occ: Labour,
4. Smt. Noorzan W/o Maheboob Ali,  
Age: 65 years, Occ: Household,
5. Panchayat Development Officer,  
Gram-panchayat, Nariboli, tq: Jewargi,

All R/o village Nariboli, tq; Jewargi,  
Dist: Kalaburgi.

**(Defendants are placed ex-parte.)**

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1	Provision under which the application is filed	U/ Order 6 Rule 17 of CPC,
2	Relief sought for	Amendment in plaint
3	The date on which the application is filed	23-09-2022
4	Number of application	I.A.No.II
5	The date which the objection are filed by different opponents	NOT FILED
6	The date on which the orders were passed on the said application	09-08-2024

**(Kashinath V. Uppar)**  
**Civil Judge & J.M.F.C.,**  
**Jewargi.**

### **ORDER**

The plaintiff has filed this application to permit him to amend the plaint by adding the proposed amendment which is as hereunder:

#### **2. The proposed amendment:**

##### ***Plaint Para No.5:-***

The defendant No.1 to 4 are no way concerned to the suit property. The suit property schedule house and open space is acquired by the mother of the plaintiff which is ancestral property. The defendant No.1 to 4 have no right and interest whatsoever in the suit schedule property be encroached tress

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pass over the suit property and with the support of Gunda elements local political persons to have illegally constructed two rooms over the suit property.

**Para No.6.**

*That, the defendants No.1 to 4 without any permission from the defendant No.5 illegally constructed two rooms in the suit property, on complaint of plaintiff to police have filed a Crime No.2007/2000. Neither the defendant No.5 nor the police have stopped illegal construction of defendant No.1 to 4 over the suit property.*

**Para No.7.**

*That the defendant No.1 to 4 have illegally forcibly encroached and constructed two rooms in the suit property.*

**Para No.8.**

*The defendants are not way concerned with the suit schedule property. The defendants forcibly constructed two rooms the defendants No.1 to 4 have illegally forcibly constructed two rooms over the suit property with the support of unsocial elements.*

**Para No.9.**

*The plaintiff has given a representation to the defendant No.1 to 4 dated 10-02-2021 requesting to stop the illegal construction of defendants, again the plaintiff requested*

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*defendant No.1 to 4 not to take up illegal construction over the suit property. The defendants No.1 to 4 have not given any heed and neglected the objections of plaintiff and illegally constructing of two rooms are completed in the suit property.*

**PRAYER**

*Therefore, it is prayed that the plaintiffs suit be decreed as under;*

*1 A decree be passed declaring that, the plaintiff is the owner of panchayat H.No.2-63, situated at village Noriboli, tq: Jewargi, dist: Kalaburagi.*

*2. A decree be passed issuing mandatory injunction against the defendants No.1 and 4 to dismantle two rooms constructed in the open area situated at village Nariboli, tq: Jewargi, dist: Kalaburagi.*

*3. Possession of the illegal constructed two rooms by encroaching in the suit property the possession be recovered from defendant No.1 to 4 and vacant possession be given to plaintiff.*

*4. That the defendants be kindly restrained from interfering in the peaceful possession of the suit property of plaintiff.*

*5. Cost of the suit may be awarded.*

*6. Any other relief may granted t which the plaintiff would be found entitled.*

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3. The plaintiff has sworn to the affidavit and stating that, he filed the suit against defendants No.1 to 5 for declaration and injunction. Plaintiff is the absolute owner in possession of suit property house bearing panchayat No.2-63 with the boundaries shown in the plaint. Accordingly, the name of plaintiff appeared in the ROR. The defendant No.1 to 4 trying to encroach upon the suit property and taken construction over the same. After filing the suit the defendants have forcibly with the help of gunda elements, encroach the suit property and constructed the two rooms forcibly over the suit property. Plaintiff has raised the objections but the defendants are not heed the request of the plaintiff. Plaintiff also filed a complaint before Jewargi police station crime No.207/2020. Now the suit is changed nature from declaration and mandatory injunction to declaration, injunction, recovery of possession. During the pendency of the defendants are encroached the suit property and constructed the two rooms therefore, the afore said proposed amendment is necessary to determination the rights of the plaintiff.

4. On considering the I.A.affidavit the points that would arise for my consideration as under:

1. Whether I.A.No.2 filed by the plaintiff under order 6 rule 17 deserve to be allowed and whether proposed amendment is necessary to adjudicate the real question of controversy in between parties ?

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2. What order ?

5. Heard the arguments on I.A.

6. The plaintiff counsel vehemently submits that proposed amendment is necessary to adjudicate the real matter in controversy between the parties. The proposed amendment does not change or alter nature of the suit, cause of action. He further argued that, court having discretionary to allow the application for amendment so that, multiplicity of proceedings can be avoided and amendment which do not totally alter the character an action should be readily granted. Further he argued that, if it is necessary for the purpose of determining the real controversy then amendment can be allowed at any stage of proceedings. He further argued that, court must not refuse, bonafide, legitimate, and necessary amendments in the pleadings if no prejudice would cause to be other side. In the present case no prejudice would be cause to the defendants therefore, he prayed to allow the application.

7. My answers to the above points are as under:

Point No.1:- Affirmative.

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

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### **REASONS**

8. **Point No.1:-** Admittedly plaintiff has filed this suit for declaratory and mandatory injunction against defendant No.1 to 5. Plaintiff is the absolute owner and possession over the suit schedule property. Defendant No.1 to 4 are tried to encroached the suit property and construct a building. After the filing this suit the defendants are encroached the suit property and construct the two rooms in the suit schedule property. Now the nature of the suit property is changed. Therefore, the proposed amendment is necessary to determining the real question of controversy between the plaintiff and defendant. The nature of the suit property slightly changed because of the defendants are already construct the two rooms in the suit schedule property. Hence, plaintiff may permit to amend the plaint.

9. It is well establish the principle of law that, while dealing with amendment application the court has two aspects, firstly the court has to be consider does the proposed amendment is necessary to adjudicate the real controversy in between the parties and second one is that, the court has to consider does the proposed amendment would affect the right of other side. In order to amend plaint the plaintiff has to satisfy the above two aspects, on perusal of proposed amendment it can be said that proposed amendment is required for adjudication of real controversy in between the parties. More ever, proposed amendment will not prejudice the rights of defendants,

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10. **At this stage, it is useful to refer the decision reported in 2016 (2) Karnataka L.J.448 Bijith International Builders, Bangalore V/S. Dia's Varghese, C and other,** wherein Hon'ble High Court of Karnataka pleaded to held that, court to allow the amendment for determining real questions in controversy provided not to cause injustice or prejudice to other side, purpose it is to minimize litigation, however, pleading cannot be claimed as a matter is right, party have prove inspite of due diligence could not raise plea before trial.

11. Admittedly, this is a suit for declaratory and mandatory injunction in respect of suit schedule property. Now the nature of suit is changed because of the defendants are construct the rooms in the suit schedule property. The proposed amendment is necessary for adjudicated the real controversy in between the parties and if in case the proposed amendment is not permitted it will leads to multiplicity of proceedings and also affected the right of the plaintiff. Moreover, the proposed amendment is appeared to be bonafide purpose. Which will assist the court in adjudicate the matter effectively. In case, the suit is disposed of without the proposed amendment then in future it will lead to complications which will result in multiplicity of proceedings.

12. the proposed amendment appeared to be necessary for adjudicating the real controversy in between the parties and in

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the case proposed amendment is not permitted it will lead to multiplicity of proceedings. The proposed amendment appeared to be bonafide purpose which will assist the court in adjudicating the matter effectively. In case, the suit is disposed of without the proposed amendment then in future it will lead to complications which will result in multiplicity of proceedings. Therefore, in order to adjudicate all the real controversy in between the parties the proposed amendment is necessary.

2. At this stage, it is also useful to refer to decision reported in **(2015) 4 SCC 182 in between Mount Mary Enterprises V/S. Jivratna made treat (p) Ltd.,.** wherein it was held that, "As per provisions of the order 6 Rule 17 of CPC, the amendment application should be normally granted unless by virtue of amendment nature of suit is change or some prejudice is cause to the defendants".

13. In this present case also the proposed amendment not affected or prejudice the right of the defendant nor will it change the nature of the suit. More ever if the application is allowed and amendment is carried out the defendants will have opportunity to file the additional written statement. Therefore, I am of the view that, the plaintiff has made out sufficient ground and proposed amendment is necessary to adjudicate the real questions in controversy between the parties. Therefore, I am of

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the opinion that, the proposed amendent application is deserved to be allowed. Hence, I answered Point No.1 in the Affirmative.

14. **Point No.2:-** In view of above discussion, I proceed to pass the following:

**ORDER**

I.A. No.2 filed by the plaintiff filed U/o.6 Rule 17 of CPC, is allowed.

The plaintiff is hereby permitted to carryout the necessary amendment in the plaint and furnish amendment plaint copy.

No order as to cost.

(Dictated to the stenographer directly on computer, same is typed by him, corrected by me, signed by me and then pronounced by me in the open court on this the 09<sup>th</sup> day of August, 2024.)

**(Kashinath V. Uppar)**  
**Civil Judge & J.M.F.C.,**  
**Jewargi.**

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