

KAKL400068472024



IN THE COURT OF THE ADDL. CIVIL JUDGE & JMFC.,
AT MULBAGAL

: PRESENT :

Smt. ROHINI. D. B.A. LLB.,
Addl. Civil Judge & JMFC., Mulbagal.

DATED THIS THE 21st DAY OF JULY, 2025.

ORIGINAL SUIT NO 479/2024

PLAINTIFF/s : **Sri. R.Somashekar,**
 S/o late Ramappa,
 Aged about 65 years,
 R/at Belagahalli Village,
 Tayalur Hobli, Mulbagal Taluk,
 Kolar District.
 Presently residing at,
 No.3363/A2,13th “B” main,
 HAL 2nd stage, Bengaluru-520 0008.

(Rep/by Advocate Sri. S.K.Venkatachapathi.,)
Vs

DEFENDANT/s : 1. **Smt. Krishnamma,**
 W/o late Doddaramappa,
 Aged about 70 years,

 2. **Sri. Lokananda,**
 S/o late Doddaramappa,
 Aged about 45 years,

 3. **Sri. Umashankar,**
 S/o late Doddaramappa,
 Aged about 42 years,

All are the R/at Belagahalli Village,
Tayalur Hobli, Mulbagal Taluk,
Kolar District.

(Rep/by Advocate Sri.K.R.Rajanna.,)

Parties to IA.No.3

Applicant : Sri. R.Somashekar,
(Plaintiff)

V/s

Opponent : Smt. Krishnamma and Other's
(Defendants)

ORDERS ON I. A. No.3

The plaintiff has filed this application Under order 6 Rule 17 R/w Sec,. 151 of CPC,. seeking permission for the amendment of the plaint.

2. It is stated in the accompanying affidavit that,the plaintiff has filed the suit for permanent injunction as well as mandatory injunction against the defendants. He is the owner of the suit property and same has been acquired through family partition deed dated 23.05.2015. The schedule property consisting of standing mango trees aged about more than 50 years. The entire schedule property consisting with Kantala Kathale and other busy plants fencing since more than 40 years. The defendants are strangers to the suit schedule property and they were owners of adjacent property bearing Sy.No.70 measuring 4 acres 35 guntas. They Interfering without any reasons and trying to remove the Kantala Kathale

boundary fencing towards the western side of the schedule property. On 15.11.2014 when he visited the schedule property the defendants with dire consequences without the knowledge of the plaintiff removed the western side of the aforesaid bushy fencing and trying to encroach nearly 2 to 10 feet of schedule property. After service of summons the defendants taking advantage that this court did not grant any relief against the defendants encroached the schedule property over 2 to 10 feet towards the western side and installed stone slabs. Therefore it is just and necessary to include item No.2 and 3 of the schedule property to identify the encroached portion in the schedule item No.1 of the property by the defendants. The defendants themselves admitted in the written statements that they have installed the stone slabs in between the schedule property. If the annexed application is not allowed the plaintiff shall sustain irreparable loss, damage and injury and if the annexed application is allowed, no hardship will be caused to the other side. Hence, prays to allow the application.

3. The defendants have filed an objection to the above application contending that the property of defendants existing towards western side of the suit schedule property. Defendants property consisting Mango trees aged about 20 to 25 years crops yielding trees in between the suit schedule property of the plaintiff and property of defendants. In between north to south there was a plant bushes and there were no Katthali fencing as alleged in the plaint. In the year 2023 while fixing of stone pillars barred wire fencing in their own land they left 2 feet

towards eastern side of plaintiff suit schedule property. At the time of fixing the stone pillars the plaintiff and his family members were present. The defendants have lodged a compliant before the Town police station. The said police have directed the defendants and plaintiff to survey the both the land and then to settle the matter. Defendants have applied for the survey of their land, the survey authorities after issuing notice to plaintiff and other adjoining holders fix the date for survey. On 21.11.2023 the survey authority measured the land and fixed the boundaries stones in the defendant's land. They have also issued the survey Haddubasth sketch. The survey sketch clearly discloses that, in survey No.70 of land there were no encroachment. Defendants have not encroached 2 to 10 feet as alleged in the proposed amendment. The plaintiff with an intension to harass the defendants filed this application. Hence, prayed to dismiss the application.

4. Heard arguments from both the sides and perused the materials on record.

5. On the basis of the above application and the objection the point that arises for my consideration is.

//POINT//

1. Whether the proposed amendment is necessary for the purpose of determining the question in controversy between the parties?

2. What order ?

6. My answers to the above point is as under for the following

Point No.1 : Affirmative

Point No.1 : As per final order

//REASONS//

7. **Point No.1** : The plaintiff has filed this suit for the relief of Permanent injunction and for mandatory injunction in respect of the suit schedule properties. Upon service of summons defendants No.1 to 3 have appeared before the Court through their counsel. The defendant No.2 has filed the written statement and defendants No.1 and 3 have adopted the written statement filed by the defendant No.1. The suit was pending for hearing on I.A.No.1, at that stage the plaintiff has filed the present application. The plaintiff by way of amendment wants to state that after filing the suit defendants have encroached the suit property towards Western side measuring to an extent of East-west 2 to 10 feet and installed stone slabs. The plaintiff wants to insert the encroached portion as item No.2 and 3 in the plaint schedule. The defendants have denied the contention taken in the proposed amendment. The subsequent even necessitated the plaintiff to seek proposed amendment. The burden is upon the plaintiff to prove the proposed amendment. The trial is not yet commenced. The proposed amendment neither changes the nature of suit nor the cause of action. If this application is allowed no prejudice will be caused to defendants. Therefore, this Court is of the opinion that the application needs to be allowed in the interest of justice. **Hence I answer point No.1 in the Negative.**

8. Point No.2: For the aforesaid discussion on Point No.1 I proceed to pass the following.

//ORDER//

**The I.A.No.3 filed by the plaintiff
Under order 6 Rule 17 R/w Sec,. 151
of CPC,. is hereby allowed.**

**For Amendment and amended
plaint.**

Call On 31.07.2025

Addl Civil Judge & JMFC,.
Mulbagal.