

**ORDERS ON IA No.IV FILED BY THE PLAINTIFF UNDER  
ORDER 6 RULE 17 R/w Sec.151 OF CPC**

The present application is filed by the applicant/ plaintiff at the preliminary stage seeking permission to amend the plaint to incorporate the suit schedule property survey number as Sy.No.11/1 instead of Sy.No.169.

2. The plaintiff in his affidavit filed in support of application has stated that he has filed the suit against the defendants for permanent injunction. Due to typographical mistake the suit

schedule property survey number is mentioned as Sy.No.169 instead of Sy.No.11/1. Hence, filed this application.

3. The defendants opposed application and contended that the suit is filed for the relief of permanent injunction in respect of property bearing Sy.No.169, but now the plaintiff wants to change the survey number as 11/1. The cause of action shown to Sy.No.169, hence amendment cannot be permitted to change the survey number. The defendants have got the grant property in Sy.No.11 and they are in absolute possession and enjoyment of the same, hence the application for amendment is liable to be dismissed.

4. Heard both parties counsels.

5. Now the points that arise for my consideration are.

1) Whether the proposed amendment is necessary for the purpose of determining the real questions in controversy between the parties?

2) What order?

6. On hearing the arguments and on perusal of materials placed on record.

7. My answer to the above points are as under:-

Point No.1 :- In the **Affirmative**.

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

### **REASONS**

8. **Point No.1 :-** In **Sampath Kumar Vs. Ayyakannu, (2002) 7 SCC 559** Hon'ble Apex court held as under:

**“9. Order 6 Rule 17 CPC** confers jurisdiction on the court to allow either party to alter or amend his pleadings at any stage of the proceedings and on such terms as may be just. Such amendments as are directed towards putting forth and seeking determination of the real questions in controversy between the parties shall be permitted to be made. The question of delay in moving an application for amendment should be decided not by calculating the period from the date of institution of the suit alone but by reference to the stage to which the hearing in the suit has proceeded. Pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof. In the former case generally it can be assumed that the defendant is not prejudiced because he will have full opportunity of meeting the case of the plaintiff as amended. In the latter cases the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case. No straitjacket formula can be laid down. The fact remains that a mere delay cannot be a ground for refusing a prayer for amendment.”

9. The plaintiff filed the suit for the relief of permanent injunction. Under this application the plaintiff has sought to incorporate the proper survey number to the suit schedule property. On perusal of plaint averments para no.2 the plaintiff has stated that the suit schedule property is a gomala land situated in Sy.No.11 measuring to an extent of 169 acres, out of which 5 acres of land was granted in favour of Boralinga @ Channa Bora on 10.11.1927, said grantee sold his property in favour of plaintiff's grandfather. To that effect they have also placed the certified copy of sale deed, wherein it discloses that there is a sale deed in respect of Sy.No.11. The RTC extract also disclose about property in Sy.No.11, but while mentioning the same in pleadings the plaintiff has described the suit schedule property survey number as 169 instead of sy.No.11/1. Hence, sought for amendment in the plaint. The defendants opposed the application by filing objection and contended that cause of action shown to file this suit for permanent injunction against the defendants for Sy.No.169, but now the plaintiff wants to change the survey number as 11/1. hence, such amendment

cannot be allowed. Since the documents produced by the plaintiff clearly disclose that they are agitating their rights in respect of property bearing Sy.No.11, but in the plaint they have described the property as Sy.No.169. When all the documents are in respect of Sy.No.11, if the proposed amendment is not allowed certainly it will cause serious prejudice to the plaintiff, on the other hand the proposed amendment is allowed it will not effect the defence taken in their written statement. If the said amendment is not considered in favour of plaintiff, he will be put to irreparable hardship, hence the proposed amendment is deserves to be considered in order to avoid multiplicity of proceedings as the main purpose of amendment is minimize litigation. The Hon'ble High Court of Karnataka in the decision reported in **ILR 2007 KAR 2489 (Sri. Riyaz Ahmad and Ors. V/s Lalith Kumar Chopra)**, at para 9 held that 'At the time of considering prayer for amendment the court should not venture to give findings on merits'. In this case, trial is yet to begin in the suit, at this stage if application is allowed no prejudice will be caused to defendant. Hence, this court is of the opinion that the proposed amendment is very much necessary in determining the controversy between the parties. Hence, I am of the opinion that, the application filed by the plaintiff deserves to be allowed. Accordingly, I answered **Point No.1 in the Affirmative.**

10. **Point No.2**:- In view of my findings on Point No.1, proceed to pass the following

### **ORDER**

The IA No.IV filed by the plaintiff  
U/o.VI Rule 17 of CPC is hereby  
allowed.

For amendment and amended  
plaint.

**(Girigowda B.)**  
Civil Judge and JMFC.,  
Nagamangala.

