

**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE & J.M.F.C,
NAGAMANGALA**

PRESENT:

Sri. Shivaraju H.S.
B.A.Law., L.L.B,
Prl. Civil Judge & JMFC, Nagamangala

DATED THIS 10th DAY OF DECEMBER-2025

O.S.No.65/2022

Plaintiff : Thimmamma

Versus

Defendants : Jayalakshamma and others

PARTIES IA No.IV

Applicant : Thimmamma
..... Plaintiff

(By Sri.J.K.R., Advocate)

Versus

Opponents : Jayalakshamma and another
..... Defendants

(By Sri.P.C.M., Advocate)

ORDER PASSED ON I.A.NO.IV

Applicant/plaintiff has filed this application under Order VI Rule 17 of CPC seeking amendment of plaint i.e., insertion of proposed amendment.

2. It is stated in the affidavit of plaintiff filed in support of application that, the plaintiff has filed the suit against the defendants for the relief of declaration and permanent injunction. The proposed amendment is in respect of illegal fencing with stone poles and hut/shed put by the defendants in the suit property during the pendency of the suit and relief of mandatory injunction to remove the illegal construction. The proposed amendment will not introduce any new case or cause of action. Therefore, it is necessary to amend the plaint as per proposed amendment. It is further stated that if the application is allowed, no hardship will be caused to the defendants and on the other hand, if the said application is rejected, plaintiff will be put into irreparable loss and hardship will be caused. Hence, prays to allow the application.

3. The defendants have resisted the application by way of filing written objection. In the objection, it is contended that, the application filed by the plaintiff is not maintainable in the eye of law. The plaintiff wants to drag on the proceedings. As such, if the application is allowed, the cause of action will also be changed. Hence, the application is not maintainable and prayed to dismiss the same.

4. Heard both the Counsel and perused the record.
5. Upon hearing and on perusal of materials placed on record, the following points that would arise for my consideration:-

POINTS

1. Whether the plaintiff has shown that the proposed amendment is just and necessary in this case for proper adjudication of the dispute?
 2. What Order?
6. My findings to the above Points are as under:-
- Point No.1: In the Affirmative,
- Point No.2: As per final order for the following:-

REASONS

7. **Point No.1:-** The plaintiff has filed this suit against the defendants for the relief of declaration and permanent injunction.
8. Before advertng to the rival contentions of the parties, it is useful to refer the ratio laid down by the Hon'ble High Court of Karnataka in ***ILR 2003 KAR 71 (Kumar and others v/s Kothandapani)*** which reads thus :

“3. *CPC.1908(Central ActNo.V of 1908)-Sec 115-order 6, Rule 17-The respondent/plaintiff in a*

suit for permanent injunction against the petitioners filed IA.No.7 Under 6 Rule 17, CPC seeking additional relief of mandatory injunction on the ground that certain constructions have been put up during the pendency of the suit and the said IA., was allowed by the Trial Court. The petitioners opposed IA.7 on the ground that the proposed amendment will change the nature of the suit and therefore the order of the Trial Court warrants interference in revision.

HELD: The Amendment appears to have been necessitated on account of subsequent events, which took place during the pendency of the suit. That being so, in order to avoid multiplicity of suits, the Respondent/plaintiff thought it proper to amend the plaint suitably which cannot be said to be either improper or incorrect. Even otherwise, it will not in anyway change the nature of suit... The proviso to sub-section 1 of Sec. 115 of CPC puts a restriction on powers of the Court as this Court shall not vary or reverse any order made except where the order made would have finally disposed of the suit or other proceedings or the said order would occasion a failure of justice or cause irreparable injury to a party against whom it is made."

9. In the instant case, the plaintiff has sought amendment in the

plaint i.e. insertion of proposed amendment in respect of illegal construction and mandatory injunction in respect of the same over the suit property. Per contra, defendants have opposed the application by contending that, application is not maintainable as it is filed after commencement of trial.

10. The proposed amendment is with respect to illegal fencing with stone poles and hut/shed put by the defendants in the suit property during the pendency of the suit and relief of mandatory injunction to remove the illegal construction, which is absolutely relating to the subject matter of the suit. The very suit of the plaintiff is for declaration and permanent injunction based on the suit property. The proposed amendment is also in respect of the same. As such, since the proposed amendment is in respect of suit property, same is necessary to decide the matter. As such, if the application is not allowed, the plaintiff will be put into great loss and hardship. Further, the proposed amendment is touching the very root of the case. As such, this court is of the opinion that, it is just and proper to allow the plaintiff to amend the plaint. Otherwise, it would cause injustice to either parties to the suit. If amendment is allowed, no cause of action nor nature of suit will change.

11. Therefore, this court is of the opinion that, if opportunity is given to the plaintiff for amendment, no hardship would be caused to the defendants. Further, defendants are at liberty to file additional written statement. ***Hence, considering all these aspects and ratio laid down in the decision referred supra, this court answered the Point No.1 in the Affirmative.***

12. **Point No.2:-** In view of the reasons assigned in above, this court proceed to pass the following:-

ORDER

I.A.No.IV filed by the applicant/plaintiff under Order VI Rule 17 of CPC is hereby allowed.

Plaintiff is permitted to amend the plaint as sought in the proposed amendment well within 14 days as per the provisions of Order VI Rule 18 of CPC.

No order as to cost.

(Dictated to the Stenographer on Computer directly, typed by him, Order corrected and signed by me, then pronounced by me in the Open Court on this the 10th day of December-2025)

**(Shivaraju H.S.)
Prl. Civil Judge & JMFC,
Nagamangala.**
