

KAMS300022522022



**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL JUDGE
AND JMFC AT HUNSUR**

Present: Smt.Anitha, B.A. (Law) L.L.B.,
Addl. Senior Civil Judge & JMFC.,
Hunsur.

Dated this the 25th day of January 2025.

OS No.115/2022

Plaintiff: K.R.Rekha, W/o Late H.S.Krishnakumar,
Aged about 52 years, R/at No.648,
Ganesh Temple Street, Hunsur Town,
Mysuru District.

-Vs-

Defendants: 1. M/S Saraswathi Haller and Mill,
Ganesh Temple Street,
Represented By its Proprietor
H.N.Ramesha S/o Late M.S.Nageshetty,
Aged about 56 years, Hunsur Town,
Mysuru District.

2. The Commissioner,
City Municipal Hunsur City,
Aged about 32 years,

3. Assistant Executive Engineer,
CHESCOM Hunsur.

1.	Provision under which the application is filed	:	Under Order 6 Rule 17 of CPC
2.	Relief sought for	:	Amendment of written-statement

3.	The date on which the application is filed	:	21.10.2024
4.	Number of the application	:	IA No.X
5.	The date on which the objection is filed by opponent	:	13.11.2024
6.	The date on which the orders passed on the said application	:	25.01.2025

ORDERS PASSED ON IA NO.X

When the case is posted for Cross of PW1, the learned counsel for the 1st defendant filed IA.No.X under Order 6 Rule 17 of CPC to amend the written statement.

2. The application is supported with the affidavit of the 1st defendant wherein it is stated that, the case is posted for cross examination of PW1 and at the time of preparing for cross examination it was noticed that, some mistake had crept in the pleadings and some important facts have been left out. He was advised to seek amendment of the written statement to set right same. The proposed amendment will not change the nature of the case and cause of action. No prejudice will be caused to the plaintiff. The proposed amendment is very much necessary to decide the case. If the application is allowed no hardship is going to be caused to the other-side. On the other-hand if the same is not allowed the 1st defendant will be put to great hardship. Hence prayed to allow the application.

3. On the other-hand the plaintiff filed objection contending that, the application is not maintainable under law or on facts. The affidavit filed in support of the application is

totally false. There is no bonafide in filing this application and it is filed to drag on the proceedings. Hence, prayed to dismiss the application with costs.

4. Thereafter, heard arguments addressed by learned counsel for the plaintiff and defendants and perused the case papers. After hearing the arguments and on perusal of the case papers the points that arise for consideration are as hereunder:

POINTS

1. Whether the proposed amendment is just and necessary to determine the real questions in controversy between the parties?
2. What order?
5. The findings of the above points are as hereunder:

Point No.1: In the Affirmative

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

REASONS

6. **Point No.1:-** The plaintiff filed the suit against the defendant seeking the relief of declaration to declare that the running of Haller and Floor Mill in 'B' schedule property is illegal and against to law. The plaintiff further sought for Mandatory injunction to direct the defendants to remove the Haller and Floor Mill in the 'B' schedule property by ordering the defendants to shift the same and in the event of refusal through process of law. The plaintiff alleged that, the suit 'A'

schedule property is the ancestral property of the plaintiff. She has got right over the same. It is also specific case that, the 1st defendant colluding with other defendants is running Haller and Floor Mill in the name and style as Sarawathi Haller and Floor Mill by the side of 'A' schedule property which is described as 'B' schedule property. The plaintiff further alleged that, several complaints to the 2nd and 3rd defendant about Air pollution, Sound Pollution and Vibration caused to the plaintiff and her family members was made. The Sound and pollution and Vibration caused damage to suit 'A' schedule property and every day the running Haller and Floor Mill is causing nuisance to the local people particularly the plaintiff is neighbour of suit 'B' schedule property. The plaintiff claimed damages at Rs.10,00,000/- for the reason that, the building got crack on the wall and floor got damaged. The plaintiff at para No.7 of the plaint also alleged that, on account of Air pollution she has spent Rs.2,00,000/- towards the medical care of her husband and her husband died due to Sound and Air pollution caused by the defendants.

7. On the other-hand the defendants appeared through their counsel and filed the written-statement. Already issues have been framed and the plaintiff got examined herself as PW1. When the case was posted for cross examination of PW1 this application came to be filed. The proposed amendment sought by the 1st defendant is to begin para No.3 by inserting the words 'The averments made', to correct the

spelling of word 'abutting' as 'abetting' in para No.6, line No.2 page No.3 of the written-statement.

8. Further, the amendment is sought to include the words after the words 'After one and all knows' in para No.10 to add one line about running Haller and Floor Mill in the suit schedule property with power supply taken on 12.10.1938. The plaintiff filed objection contending that, the proposed amendment is not at all necessary. On going through the amendment sought by 1st defendant, the objection raised by the plaintiff is not at all tenable. The 1st defendant want to make some clerical corrections in the written statement and to mention about the date of taking power supply to run Huller and Floor Mill. The propose amendment will not change the nature of the suit and cause of action. No hardship is going to be caused to the plaintiff if the proposed amendment is permitted. Further, no right accrued to the plaintiff in the written-statement of the 1st defendant will take away. If the proposed amendment is allowed definitely the plaintiff get an opportunity to file her rejoinder. Therefore, this comes to the conclusion that, the proposed amendment is just and necessary to determine the real questions in controversy between the parties. Accordingly, point No.1 is answered in the affirmative.

9. **Point No.2:** In view of the reasons discussed above, this court proceeds to pass the following:

ORDER

IA No.X filed by the 1st defendant under Order 6 Rule 17 of CPC is hereby allowed with cost of Rs.200/-.

Accordingly, the 1st defendant is permitted to amend the written-statement as sought for.

(Dictated to the Stenographer, transcribed and computerized by her on the computer, transcript corrected and pronounced by me in the open court on this the 25th day of January, 2025)

(Anitha)

Addl. Senior Civil Judge and JMFC.,
Hunsur.