

KAMS400004752021



**IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC
AT K.R.NAGAR**

PRESENT: **Sri. Aravindra B.C., B.A., L.L.B.,
Senior Civil Judge & JMFC,
K.R.Nagar.**

Dated this the 21st day of November, 2024

O.S. No.46/2021

Plaintiff : Smt. H.K.Suprabah

-Versus-

Defendants : Sri. T.S.Guruprasad and others

Parties to I.A.No.XIII

Applicant : Smt. H.K.Suprabha,
W/o R.P.Vijaykumar,
Aged about 62 years,
R/at: #3, V.J. Apartment,
Flat No.104, 6th cross,
R.K.Layout, Padmanabha
Nagar, Bengaluru-70.

**..... Plaintiff
(By Sri. H.S.D., Adv.)**

-V/s-

Opponents : 1. Sri. T.S.Guruprasad,
S/o A.T.Siddegowda,
Aged about 35 years.



2. Sri. S.M.Nagaraju,
S/o M.Mayanna,
Aged about 39 years,
R/at: Sathigrama village,
Kasaba Hobli,
K.R.Nagar Taluk.
3. Sri. A.T.Siddegowda,
S/o Late Thammegowda,
Aged about 68 years.
4. Smt. Prema,
W/o A.T.Siddegowda,
Aged about 62 years.
5. Smt. Kamakshi,
W/o T.S.Guruprasad,
Aged about 34 years.

Opponent No.1, 3 to 5 are
R/at: Chowkahalli village,
Kasaba Hobli,
K.R.Nagar Taluk.
6. The Chief Secretary,
State of Karnataka,
7. The Chief Executive officer,
Zilla Panchayath, Mysuru.
8. The Executive officer,
Taluk Panchayath,
K.R.Nagar.
9. The Panchayath Development
Officer, Gramapanchayath
Dornahalli-Doddekoppalu,
K.R.Ngar Taluk.

..... Defendant
(D1, 3 to 5 by Sri. K.R.C., Adv.)



(D2 by Sri. K.P.M., Adv.)
(D6 A.G.P.)
(D7 to 9 by Sri. T.G., Adv.)

Provision under which the application is filed	Under Order 6 Rule 17 R/w Section 151 of CPC.
Relief Sought For	Seeking permission to amend the plaint.
The date on which the application is filed	03.07.2024
Number of the application	IA No.XIII
The date on which the objections are filed by the different opponents	20.07.2024
The date on which the orders were passed on the said application	21.11.2024

ORDER ON IA.No.XIII

The plaintiff has filed I.A.No.XIII under Order 6 Rule 17 R/w Section 151 of Code of Civil Procedure and seeking permission to amend the plaint by inserting two more paras in relating to issuance of legal notice and explain the contents of the legal notice.

2. In the affidavit, which enclosed to I.A.No.XIII, wherein the plaintiff has stated that, she filed a suit



against the defendants for the relief of declaration and permanent injunction with respect to the schedule property. On the other hand, the defendants denied the case of the plaintiff. According to plaintiff, she was issued legal notice to the 1st defendant stating that, the defendant No.1 had tried to encroached the schedule property by removing the fence which is already existing in the schedule property. The said fact came to her knowledge recently. Therefore, the plaintiff has intended to amend the plaint by introducing the said fact in the pleadings. Therefore, the proposed amendment is very necessary to adjudicate the matter. If the application is allowed, no harm will be caused to the other side. If the application is not allowed, the plaintiff will be put to great hardship. Accordingly, prays for allow the application.

3. On the other hand, the defendants have filed objection to the application. In the objection it is stated



that, the application filed by the plaintiff is not maintainable both in law and facts. Further it is stated that, if the proposed amendment is allowed, the nature of suit and cause of action will be changed. Accordingly, the application filed by the plaintiff is no merits. Therefore, prays for reject the application.

4. Heard and perused the records.

5. The following points that would arise for this court consideration is:

1. Whether the plaintiff has made out ground that, the proposed amendment to be necessary for the purpose of determining the real question in controversy between the parties?

2. What order?

6. The findings on the above points are as follows:

Point No.1	:	In the Affirmative
Point No.2	:	As per final order for the following :



REASONS

7. **Point No.1:-** It is noticed from the pleadings of the parties that, the plaintiff has filed a suit against the defendants for the relief of declaration and injunction with respect to the suit schedule property. On the other hand, the defendants have appeared before this court and filed written statement. On the basis of rival claimants of the parties, this court framed issues and when the case posted for arguments, the present application was filed.

8. Now the question arise before this court is, whether the amendment is necessary for the determination of the real question in controversy between the parties. Before discussion of the above point, this court glance the provision under Order 6 Rule 17 of Code of Civil Procedure. Hence, it is relevant to mention under **Order 6 Rule 17 of Code of Civil Procedure;**



9. Rule 17 provides for amendment of pleading it reads under;

“The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

10. The said provision makes it clear that, at any stage of the pleadings allow the either party to alter or amend his pleadings. If the proposed amendment be necessary for the purpose of determining the real question in controversy between the parties.



11. It is well settled that, all amendments ought to have been allowed which satisfy the two conditions 1) of not working in justice to other side and 2) of being necessary for the purpose of determining the real questions in controversy between the parties.

12. It is relevant to refer the decision of Hon'ble Supreme Court of India in the case of **Life Insurance Corporation of India V/s Sanjeev Builders Private Limited** and Another reported in **2022 online SCC 1123** wherein, the Hon'ble Apex Court held as under;-

(i) xxxxx

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order Vi Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed:



(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided:

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless:

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is mala fide, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily



required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is



required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi & Ors., 2022 SCC OnLine Del 1897)

13. In view of above, all applications for amendment were required to be considered liberally, without considering merits of amendment sought for except where relief sought would be time barred. It is also cautioned that amendments which would result in changing nature of suit or cause of action or where application filed was malafide. It is also observed that mere delay in filing application would not be a ground for denying amendment and where it is sought for bring out real controversy, it was to be allowed.



14. In the instant case, the plaintiff has sought for amendment of the pleadings in relating to the issuance of legal notice. On perusal of the plaint averments, it is noticed that there is no averments with regard to the issuance of legal notice. The plaintiff has stated in the affidavit is that the said fact came to her knowledge recently. Therefore, she intended to introduce the said fact in the pleadings. If the application is allowed, no harm will be caused to other side and the proposed amendment does not change the nature of suit nor cause of action. If the application is not allowed, the defendants have got right to file additional written statement. Hence, in order to avoid the multiplicity of proceedings, the proposed amendment is allowed. **With these observations, this court answered Point No.1 is in the Affirmative.**



15. **Point No.2**: In view of the discussions and conclusion arrived at Point No.1, this court proceed to pass the following;

ORDER

IA. No.XIII filed by plaintiff under Order 6 Rule 17 R/w Section 151 of C.P.C. is hereby allowed on cost of Rs.2,000/-.

The plaintiff is permitted to amend the plaint as prayed for.

Accordingly, the plaintiff is directed to furnish the amended plaint within 14 days from the date of this order.

*[Dictated to the Stenographer directly on computer, corrected and then pronounced by me in the Open Court on this the **21st day of November, 2024**]*

**(ARAVINDRA B.C.)
SENIOR CIVIL JUDGE & JMFC.,
K.R.NAGAR.**