

**ORDER ON I.A. NO.5 FILED U/O 6 R-17 R/w 151 OF C.P.C.**

The instant application has been filed and instilled by the plaintiff/applicant with prayer to amend the pleadings of the plaint as stated in the application.

**2.** The plaintiff No.1(e) who is the legal representative of deceased plaintiff L.B.Irappaji filed his statement of affidavit by swearing the oath he has stated that, during the life time of his father, his father L.B.Irappaji filed this suit in the year 2019 for the relief of declaration and permanent injunction. The defendants appeared through their counsel and filed their written statement. After the death of their father L.B.Irappaji who is the original plaintiff, taking advantage of the fact that, the LRS of the plaintiff are not visiting the plaint schedule property, the defendants illegally encroached the entire plaint schedule property during the month of January 2023. In spite of the advises of the elders in the Alanahalli and Basavarajapura Village during the first week of 2023, the defendants have not vacated or handed over the possession of the property in favour of the plaintiff. Under these circumstances the plaintiff seeks to amend their plaint pleadings and also the prayer column. Hence, prayed for allowing the application.

**3.** The defendants filed their objections by denying entire pleadings of the application and also the affidavit filed in

support of this application. Further it is contended by the defendants that, the instant application has been filed with the false allegations and suppressing the real material fact before this court. Initially the cause of action for instilling the suit was arose on 19.06.2019 as per the original plaint and LRS of the plaintiff stating that, the cause action has been arised in the first week of February 2023. If the application is allowed the entire nature of the suit will be changed and the allegations made in the affidavit are false without any documents and hence the said application is not maintainable either in law or on facts. Accordingly prays for dismissal of the application.

4. Heard the rival parties to the application and also gone through the pleadings of the application, objection and also documents relied up on by the respective parties.

5. The following points arise for this court's consideration.

**1) Whether applicant has made out sufficient grounds for allowing the present application?**

**2) What Order?**

6. This court findings on the above points for consideration are as under:

**Point No.1: In the Negative**

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

**REASONS**

**7. POINT NO.1:**

Upon the perusal of the pleadings of the plaintiff, written statement, the affidavit filed in support of this application and also the objections raised by the defendants, it is manifesto crystal and very clear from the pleadings itself that, initially the father of the applicants by name L.B.Irappaji has lodged this suit against the defendants. During the pendency of the suit, the original plaintiff by name L.B.Irappaji demised and accordingly the applicants are brought on record as the legal representatives of the deceased L.B.Irappaji. Admittedly while instilling the suit from the pleadings of the plaintiff it could be pursued and observed that, the suit was filed for declaration and also permanent injunction. The original plaintiff L.B.Irappaji in his pleadings of the plaintiff at para No.4 he has specifically stated that, he had been in peaceful possession and enjoyment over the schedule property. The defendants are strangers not having any title, interest or possession over the schedule property. Accordingly the plaintiff prayed to secure his possession from passing injunctive relief against the defendants from causing any interference in respect of peaceful possession over the schedule property of the plaintiff. However now the applicant after death of his father, came up with the present application seeking to amend their pleadings of the plaintiff as per the application filed under Order 6 rule 17 of C.P.C. Further the applicant filed his affidavit to support

their application and he has stated on oath that, after the death of their father L.B.Irappaji, the defendants taking advantage of the absence of the plaintiffs, the defendants have encroached entire plaint schedule property in the month of January 2023. Accordingly the plaintiff is seeking amendment of entire pleadings and also prayer of the plaint.

**8.** Admittedly upon perusal of the order sheet, it is pertinent to note that, when the suit was filed by the father of the applicant by one deceased L.B.Irappaji, this court upon hearing arguments of the counsel for the plaintiff on the pleadings of the plaint and application, on 22.06.2019 this court has already passed an exparte temporary injunction order against the defendant No.1 and 2 by restraining the defendants from causing any interference in respect of the possession of the plaintiff's over the suit schedule property. Now the legal heirs of the plaintiff after the death of the L.B.Irappaji, they have brought up this application with the different plea and also contrary to the pleadings of the plaint. On bare and plain reading of the original plaint and also the amendment sought in the application simplicitor gives two different dimensions.

**9.** One is the original plaintiff L.B.Irappaji has taken plea that, he was in possession of the property and instilled application. However the present applicant has taken different

plea and it was asserted by him that, the possession of the plaintiff has been encroached by the defendants in the month of January 2023. These two pleadings of the plaintiff and also application are quite contrary and different against each other in respect of the pleadings of the plaintiff and they are not similar and identical.

**10.** Admittedly prayer of the suit also requires to be amended as per the subsequent allegation made by the legal heirs of plaintiff. Accordingly to the plaintiff, the defendants encroached the schedule property during the month of January 2023. Admittedly this court has already passed ex parte temporary order while filing of this suit against the defendants and restrained the defendants from causing any interference in respect of the possession of the plaintiff and the said order was in force till the defendants filing their written statement and objections. However the said ex parte order of injunction has not been further extended by the plaintiff's upon appearance the defendant and filing their statement before this court. As such the pleadings of the plaintiff and also the amendment sought in the application are quite different and contrary pleadings with each other. Further the cause of action as stated in the application and also the plaintiff are also arose in two different times. At this juncture, if the plaintiff/applicants are permitted to amend their pleadings certainly it will change the entire nature of the suit

and also the cause of action. Further the plaintiff has to bear and incur the court fee on the additional relief of possession which is allegedly encroached by the defendants in the month of January 2023. Hence, when this court already granted an exparte temporary injunction order against the defendants, the plaintiff was under the obligation and duty bound to get extend injunction order from time to time unless final order has passed on the application. During the existence of the interim order granted by this court, if the defendants encroached the property of applicant/plaintiffs, the remedy available to the applicant/ plaintiffs, then would be to proceed against the defendants for violation and infringing the court order passed by this court. When any persons during the existence of any T.I order violates or commits any breach of any particular court order, then the aggrieved person has to take and initiate the action against the infringer or wrong doer by invoking the provisions of order 39 rule 2(A) of C.P.C. It seems that the exparte T.I. order granted by this court has not been further extended or no final order has been passed on the said application.

**11.** Under these circumstance, though this court may allow either party to the suit to amend their pleadings at any stage of the proceedings, if the plaintiff/ applicants are permitted to amend their pleadings as stated in the application, it completely overlap and take over the pleadings of earlier plaint

and it is having quit contrary impact and effect and also it will leads to complete change in the nature of the suit. Hence, for the reasons stated in the application, this court is an opinion that, the plaintiff's application which is seeking to amend the pleadings of the plaint as stated in the application are quit contrary to the provisions enunciated under the code. Accordingly the said application is liable to be dismissed. Hence, this court without further discussion proceeds to answer point No.1 in the **Negative**.

**12. POINT NO.2:**

In view of the above discussion and reasons mentioned therein this court proceeds to pass the following:

**ORDER**

The I.A.No.5 filed by applicants under order 6 rule 17 R/w 151 of C.P.C. is sans merit and accordingly the same is hereby dismissed.

Call on:

(Chandan S)  
Addl. Civil Judge & JMFC.,  
K.R.Nagar.