

KARN320027302017



IN THE COURT OF THE II ADDL.CIVIL JUDGE & J.M.F.C.,
AT KANAKAPURA.

Present: Smt. Savita Rudragouda
Chikkanagoudar., *B.A., LL.B.*,
II Addl. Civil Judge & JMFC,.
Kanakapura.

Dated: This 09th day of January 2025

O.S. No. 460/2017

Plaintiff : Sri. Rajanna

(By Sri. M.G., Adv.)

//Vs.//

Defendants : Sri. Shivananjappa and others

(By Sri. H.R.S., Adv.)

I.A.No.VIII

Plaintiff :

Applicant : Sri. Rajanna

-V/S-

Defendants:

Opponents : Sri. Shivananjappa and others

**ORDER ON I.A.No 8 UNDER ORDER VI RULE 17 R/w SEC
151 OF CPC FILED BY THE PLAINTIFF**

The present application is filed by the applicant/plaintiff under order VI Rule 17 Read with 151 of the Civil Procedure Code to permit him to amend the plaint in the interest of justice and equity.

2. In the application the plaintiff has sought the permission to amend the plaint body part and the prayer column. It is specific contention of the plaintiff that, he has filed the present suit against the defendants seeking the relief of permanent injunction with respect to suit schedule "A" and "B" properties and the suit schedule "B" property is a road portion measuring is East to West 110 feet and North to South 12 feet situated towards northern side of "A" schedule property and since from time immemorial the said road was used even by the vendor of the plaintiff for the purpose of taking cattle, cow, bullock cart, tractor and other agricultural equipments to "A" schedule property and after purchase of the "A" schedule property, plaintiff also using the same to reach his "A" schedule property. Except the said "B" schedule road there is no other alternative way to access

to plaintiff's "A" schedule property. But at the time of filing of the suit due to ignorance plaintiff could not give correct instructions to his counsel to seek the relief of easement and now on the advice of his counsel he is seeking the relief of easement over "B" schedule property, by way of amendment. The plaintiff also states that, the proposed amendment is very much necessary to adjudicate the matter in dispute and the proposed amendment does not in any way alter or change the nature of the suit nor will it cause any harm or prejudice to the defendants. Hence, prays to allow the application.

3. On the other hand, in the objection filed to said application by the defendants, it is contended that, plaintiff filed the present suit against the defendants seeking the relief of permanent injunction on the ground that, he is the absolute owner in possession of the suit "A" and "B" schedule properties but now plaintiff wants to change his version by claiming the easementary right in the defendants property. The plaintiff is using his clever mind to patch up the lacuna of the suit, which is oppose to law. The plaintiff has already led his evidence and even the

defendants have led their evidence and now plaintiff has come up with this present application seeking the proposed amendment. The defendants also state that, defendants have proved their ownership of "B" schedule property. Hence, now plaintiff wants to change his version, the plaintiff has also given an admission at the time of his cross examination but now by filing this application he wants to grab the property of the defendants by making false claim. The suit schedule "A" property is the adjacent property of the defendants property and plaintiff by mis-using the same tried to claim false title over defendants property and now after the lapse of 7 years when the trial has come to an end the present amendment sought by the plaintiff is not maintainable, as the same will change the nature of the suit and cause of action, if the application is allowed. Hence, prays to reject the application and also relied on the decisions of Hon'ble Apex Court in support of their contention.

4. Heard and Perused material placed on record.

5. Now the points that would arise for my consideration are as follows:-

1. Whether the plaintiff has made out grounds that proposed amendment would be necessary for adjudication of the matter in question effectively ?
 2. What Order?
6. My answer to the above points is as follows.

Point No.1: In the Negative

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

REASONS

7. **Point No.1:** The present suit is filed by the plaintiff against the defendants seeking the relief of permanent injunction and the present application is filed when the case is at the stage of defence evidence. In the said application the plaintiff has stated that , the suit schedule "B" property is a road portion measuring is East to West 110 feet and North to South 12 feet situated towards northern side of "A" schedule property, which belongs to him and since from time immemorial the said "B" schedule road was used even by the vendor of the plaintiff for the purpose of taking

cattle, cow, bullock cart, tractor and other agricultural equipments to "A" schedule property and after purchase of the "A" schedule property plaintiff also using the same to reach his "A" schedule property. Except the said "B" schedule road there is no other alternative way to access to plaintiff's "A" schedule property. But at the time of filing of the suit due to ignorance plaintiff could not give correct instructions to his counsel to seek the relief of easement and now on the advice of his counsel he wants to amend the para 2 of plaint to state facts regarding his easementary right over "B" schedule property and also to add prayer claiming easementary right over "B" schedule property by way of amendment.

8. On the other hand, in the objection filed to said application by the defendants, it is contended that, plaintiff filed the present suit against the defendants seeking the relief of permanent injunction on the ground that, he is the absolute owner in possession of the suit "A" and "B" schedule properties but now plaintiff wants to change his version by claiming the easementary right in the defendants property. The plaintiff is using his clever mind to

patch up the lacuna of the suit, which is opposed to law. The plaintiff has already led his evidence and even the defendants have led their evidence and now plaintiff has come up with this present application seeking the proposed amendment. The defendants also state that, defendants have proved their ownership of "B" schedule property. Hence, now plaintiff wants to change his version, the plaintiff has also given an admission at the time of his cross examination but now by filing this application he wants to grab the property of the defendants by making false claim. The suit schedule "A" property is the adjacent property of the defendants property and plaintiff by mis-using the same is trying to claim false title over defendants property and now after the lapse of 7 years when the trial has come to an end the present amendment sought by the plaintiff is not maintainable , as the same will change the nature of the suit and cause of action. Hence, prays to reject the application.

9. At this point of time it is relevant to refer order 6 rule 17 of CPC as it stands after amendment. As per order 6 rule 17 of CPC " The court may at any stage of the

proceedings allow either party to alter or amend his pleadings in such a 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.

10. 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. After going through the provision it is clear that court has discretionary power in granting the amendment and such a discretionary power must be exercised by court with care and caution and the amendment sought after the trial shall not be allowed by the courts, unless the court comes to the conclusion that in spite of exercise of due diligence the party could not have raised the matter before the commencement of trial.

11. In the case on hand, let me see whether plaintiff has used his due diligence. The plaintiff in this case has not stated anywhere why he could not seek for amendment of plaint earlier. The amendment which the plaintiff is now

seeking is to permit him to claim the right of easement over "B" schedule property to approach "A" schedule property. Whereas in his pleadings as could be made out from his plaint averments para number 2, he has claimed that he is the owner of "B" schedule Road measuring east to west 110 feet and north to south 12 feet and that he is in lawful physical possession and enjoyment of both the suit schedule properties and towards north of his land in Sy. No. 237 there is a road which was left by his vendor to access to plaintiff's land and house and after the said road defendants property is situated but the defendants have no manner of any right title, interest over both the suit schedule "A" and "B" properties. Further, Now coming to his cross, at the time of his cross plaintiff has admitted that, defendants have not interfered in his possession and enjoyment of suit schedule properties in Sy. No. 236 and 237 and also admit that, suit schedule "B" property does not come within suit schedule "A" property and towards East of suit schedule property defendants have their property and house properties shown in Ex.P8 and 9, hence on going through the pleadings of the plaintiff and his cross it can be

made out that in his plaint he is claiming ownership right over "B" schedule property but now by way of amendment, he is claiming easementary right over same property and both the claims are contrary to each other. The plaintiff was earlier claiming ownership right and now he is claiming easementary right over same property that too when the case is at the stage of defendant evidence. The proposed amendment introduces a totally different, new and inconsistent case and changes the fundamental character of the suit and would place the defendants in such a position that they they cannot be recouped by any allowance of costs or otherwise. The proposed amendment would alter the cause of action on the basis of which the original lis was raised and is inconsistent and contradictory to admitted position of facts and mutually destructive in nature. It is a well settled rule of law that an amendment to pleadings shall not be allowed, if it is sought after the trial has commenced unless court is convinced that the party could not have raised the issue before the trial began despite exercising due diligence. In the case on hand the plaintiff has not made out any grounds why he could not

earlier plead facts regarding same. It appears that facts which plaintiff now wants to plead by way of amendment are the one which he could have raised before trial by exercising due diligence.

12. At this point of time it is also relevant to note that, the learned counsel for defendant has relied on decision of **Hon'ble Apex Court in Civil Appeal No.2886/2012 between Basavaraju V/s Indira and others**, where in the Hon'ble Apex Court held that "What was pleaded as by oversight, same cannot be accepted as a ground to allow any amendment in the pleadings, at the fag end of trail especially when admittedly the facts were in knowledge of party seeking the amendment". In the present case also, the plaintiff has not stated why he could not plead the proposed facts earlier, even though the said facts were well within his knowledge and seeking amendment at the fag end of trial, without any proper explanation of delay in seeking same. Hence, for the reasons discussed above, the court is of the opinion that plaintiff has not made out grounds to allow the application. Accordingly, I answer **Point No.1 in the Negative .**

13. **Point No.2:** For the reasons discussed above, I proceed to pass the following.

ORDER

I.A No.VIII filed under Order VI Rule 17
R/w Sec. 151 of CPC by the plaintiff is hereby
dismissed.

(Dictated to the Stenographer directly on computer, then corrected by me
and pronounced in the Open Court on this **09th day of January 2025**)

**II Addl. Civil Judge & JMFC.,
Kanakapura.**