

**IN THE COURT OF THE ADDL. SENIOR CIVIL JUDGE &
J.M.F.C., AT: MAGADI.**

Present:

Sri.Hanumanth Satwik., LL.M,
Addl. Senior Civil Judge & JMFC., Magadi.

Dated: this the 16th day of February 2021

O.S.No.116/2016

Plaintiff : Smt. Venkatamma,
W/o late Bettaiah,
Aged about 60 years,
R/at Donenahalli Village,
Bidadi Hobli,
Ramanagara Taluk & District.

(By Sri. **B.V.K.**, Advocate)

V/s

Defendants : 1 Sri. Galappa,
Father Name not known,
Aged about 70 years,
R/at Mayasandra Village,
Tavarekere Hobli,
Bengaluru South Taluk.

2 Sri. Munikrishnappa,
S/o late Channapillaiah,
Aged about 41 years,
R/at Donenahalli Village,
Thavarekere Hobli,
Bengaluru South Taluk.

- 3 The Special Land Acquisition Officer,
Kaveri Bhavan, K.G.Circle,
Bengaluru – 560 009.
4. Smt. Arasamma,
W/o late Kemoaiah,
R/at Mayasandra Village,
Chikkanahalli Post,
Tavarekere Hobli,
Bengaluru South Taluk.

(D1 By Sri. **S.H.**, Advocate)

(D2 By Sri. **A.N.**, Advocate)

(D3 By Sri. **K.R.M.**, Advocate)

ORDER ON IA NO.IV

The present suit is for declaration and permanent injunction.

2. The plaintiff has filed the present application U/o. VI rule 17 of CPC seeking permission of this court to allow him to amend the plaint. The plaintiff submits that at the time of filing the suit there was some typographical error in mentioning his address. While preparing the present application his counsel noticed the same. The present suit was prepared hurriedly as the suit schedule property was the subject matter of acquisition by defendant no.3 and defendant no.1 was making hectic attempts to withdraw the compensation amount. While preparing the suit he was not present

in the office of his counsel as such, the boundaries of the suit schedule property was left blank. However, due to urgency his counsel might have forgotten to mention the boundaries to the suit schedule property. The suit was presented by the colleague of his counsel. He might not have noticed the boundaries of the suit schedule property. In the mean time defendant no.4 was impleaded in the suit. Accordingly, he filed amended plaint. The learned counsel for the defendant noticed that in the original plaint the boundaries of the suit schedule property was left blank, however the boundaries were included in the amended plaint. His counsel after inspection of the suit schedule property got inserted the boundaries in the plaint. Unfortunately, by that time the original print of the plaint was taken and handed over to his colleague. This may be the reason in not mentioning the boundary in the plaint and insertion of boundary in the amended plaint. This act was happened inadvertently and it is not intentional. Due to changed circumstances insertion of proposed amendment is necessary. In this regard the plaintiff prays as above.

3. Defendant no.4 filed objections to the application contending that the present application is not maintainable. When the plaint was presented before the court the plaintiff did not mention the boundaries to the suit schedule property. Only when the impleading application was allowed and the plaintiff was ordered to file amended plaint, the plaintiff without any prior permission of this court filed amended plaint including the boundaries to the suit schedule property. This fact shows that the plaintiff did not approach the court with clean hands. Without prior permission of this court, amendment was already carried out by the plaintiff. In this circumstances the present applications lacks merit. The plaintiff inserted the boundaries in the amended plaint with a malafide intention. The present application is filed as an after thought. In this regard the defendant prays to reject the application.

4. Heard arguments of the learned counsel for plaintiff and defendant no.1 and 4. In spite of giving sufficient opportunity to

defendant no.2 and 3, they did not address arguments on the application. In this circumstances the arguments of defendant no.2 and 3 was taken as nil.

5. Considering the contentions of the counsel, following points arise for my consideration.

1. *Whether the amendment sought for is necessary to determine the real question in controversy?*
2. *What order?*

6. My findings for 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 sought permission of this court to allow him to amend the plaint. The plaintiff submits that due to inadvertence and typographical error the proposed amendment was not included in the plaint. Further, due to inadvertence, though the boundaries of the suit schedule property was not mentioned in the original plaint, the same got inserted in the amended plaint. In this

regard I have perused the application, objection and the pleadings. Be it stated, in the case at hand there was no boundaries mentioned to the suit schedule property in the original plaint, however, the plaintiff has inserted boundaries to the suit schedule property while filing amended plaint before the court, though there was no specific order by this court in that regard. Be that as it may, perusing application shows that due to inadvertence the plaintiff might have included the boundaries in the amended plaint, though there was no order from this court. So also, it is settled principle of law that the procedural law is hand maid of justice and procedural law should not be construed strictly so as to undermine justice. For this I rely on the decision of Hon'ble Supreme Court of India between Salem Advocates' Bar Association v. Union of India cited in AIR 2005 SC 3353 wherein it was held thus;

***“The rules of procedure are made to advance the cause of justice and not to defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred.*”**

The rules or procedure are handmaid of justice and not its mistress”.

In view of the law laid down by the Hon'ble Apex Court I am of the view that though the plaintiff inserted boundaries to the suit schedule property in the amended plaint without there being any order from this court, I am of the view that the said mistake being technical in nature, in the interest of justice and equity, the act of plaintiff requires to be excused.

8. Further, in this regard I have perused the amendment sought for and I have also perused the plaint. Considering the same, it is clear that the plaintiff intends to incorporate boundaries to the suit schedule property and the address of the plaintiff. The present suit is one for declaration and permanent injunction. Considering, the questions that need to be answered in the present suit, I am of the view that incorporation of the proposed amendment in the plaint is necessary so as to determine real question in controversy. Further, the proposed amendment is necessary to rectify and regularize the mistake of the plaintiff in inserting the boundaries to the suit

schedule property without order from this court.

9. In the case at hand the defendant contended that the application is filed at belated stage. The application is filed to fill up the lacuna. The plaintiff inserted boundaries of the suit schedule property in the amended plaint without there being any order from this court and with an malafide intention. Be it stated, in view of the law laid down by the Hon'ble Apex Court in Salem Advocates' Bar Association v. Union of India cited in AIR 2005 SC 3353 cited *supra*, I am of the view that the contentions raised by defendant no.4 merit no acceptance at this stage of the case. Even otherwise, the contentions raised by the defendant are the subject matter of trial and cannot be decided at this stage of the case. In this view of the matter I am of the view that the contentions of defendant no.4 are of no avail to him at this stage of the case.

10. Further, on perusal of the application it appears that in spite of due diligence the plaintiff could not have raised the matter before the commencement of the trial. On perusal of the proposed

amendment it appears that the proposed amendment does not intend to bring new case, on the other hand the amendment proposes to make the suit comprehensive. The proposed amendment if brought on record, the cause of action existing and the nature of the suit will remain unharmed. If the proposed amendment is allowed the nature of the suit will not be changed and the basic structure remains unharmed. Considering the questions that need to be determined in the present suit and in view of the purpose the proposed amendment intends to achieve, I am of the view that, the proposed amendment is necessary to be carried out to determine real question in controversy.

11. It is to be noted that plaintiff has every right to put-forth his grievances and he is the master of his averments, this being the case if proposed amendment is not allowed to be carried out the plaintiff cannot put-forth his case effectively and completely and bring clarity in the facts alleged. Considering this, I am of the view that, opportunity should be accorded to the plaintiff to put-forth his case in its entirety by carrying out the amendment.

12. Furthermore, if the proposed amendment is not allowed to be carried out the inconvenience which may be caused to the plaintiff is more than the inconvenience, which may be caused to the defendants if the same is allowed to be carried out. Further, if amendment is not allowed the injury which may be sustained by the plaintiff cannot be compensated at any cost. On the other hand, the defendants will have an opportunity to contest the matter and get the same decided on merits.

13. Considering the plaint, the application, the objection and the proposed amendment, I am of the view that in the interest of justice and equity it is necessary that the proposed amendment be incorporated in the plaint so as to determine real question in controversy and to make the suit comprehensive. In these circumstances, I decide point No.1 in the affirmative.

14. **Point no.2:-** In view of reasons on point No.1 and in the interest of justice and equity, I proceed to pass the following;

ORDER

**IA No. IV U/o. VI Rule 17 R/w Sec.151 of
CPC filed by the plaintiff is hereby allowed on
cost of Rs.200/-.**

(Dictated to the stenographer directly on the computer, typed by him, corrected by me and then pronounced in the open court on this the **16th day of February 2021**)

**(Hanumanth Satwik)
Addl. Senior Civil Judge & JMFC.,
Magadi**