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**IN THE COURT OF THE ADDL.CIVIL JUDGE & JMFC, AT
MAGADI**

**PRESENT: SMT.DHANALAKSHMI.M. B.A.L., LL.B.,
Addl.Civil Judge & JMFC,
Magadi, Ramanagara District.**

Dated: This 21st day of November, 2023

O.S.NO.179/2017

PLAINTIFF : Sri.T.Hanumatharayappa
S/o Late Thimmegowda,
Aged about 55 years,
Residing at Channohalli Village,
Soluru Hobli. Magadi Taluk,
Ramanagara District.

(By Sri.S.G.R., Advocate)

V/s-

DEFENDANTS : 1.Sri.Nanjappa
S/o Late Hosalaiah,
Aged about 65 years,

2. Sri.Srinivasa
S/o Nanjappa,
Aged about 45 years,

3.Sri.Prabhu
S/o Nanjappa,
Aged about 35 years,

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4. Sri.Purushotham
S/o Nanjappa,
Aged about 32 years,

All are residing at
Channonalli Village,
Soluru Hobli,
Magadi Taluk,
Ramanagara District.

(D1 By Sri.M.V.S., Advocate)
(D2 By Sri.S.V., Advocate)
(D3 & 4 Exparte)

I.A.VI

APPLICANT : Sri.T.Hanumantharayappa.

-V/s-

OPPONENTS : Sri.Nanjappa and others.

P R E A M B L E

1	Provision under which the application is filed	Under Order VI Rule 17 of Civil Procedure Code.
2	Relief sought for	Amendment of the plaint.
3	The date on which the application is	27.06.2023

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	<i>filed</i>	
4	<i>Number of the applicant</i>	<i>I.A. No.VI</i>
5	<i>The date on which the objections are filed by different opponents</i>	<i>19.07.2023.</i>
6	<i>The date on which the orders were passed on the said application</i>	<i>21.11.2023.</i>

ORDER ON I.A No.VI Under Order-VI Rule-17 r/w Sec.151 of C.P.C

The Plaintiff has filed present application under Order VI Rule 17 read with Section 151 of CPC for amendment of written statement and the case is at the stage of plaintiff evidence.

2. The plaintiff has filed an affidavit in support of the application and stated that, at the time of filing of the plaint, due to oversight plaintiff has not mentioned the name of the persons who comes towards the boundary of the western side of the item No.2 of the suit schedule property, the same is very necessary to prove his case effectively, subsequently, plaintiff came to know about the same and immediately plaintiff has filed the above application to correct the details of the boundary

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of the western side of the item No.2 of the suit schedule property for proper adjudication of the matter it is very just and necessary to allow the accompanying application. Hence, prays to allow the application.

3. The defendants have filed objection to this application stating that, the plaintiff has filed the suit on relaying upon the alleged Panchaythi Parikath dated 24-6-1983, in the alleged Panchaythi Parikath dated 24-6-1983 the boundary of the item no. 2 of the suit schedule property towards western side s mentioned as land of Chikkathopaiah, accordingly the plaintiff drafted the plaint and given boundary of the item no. 2 of the suit schedule property towards western side as Chikkathopaiah, now the plaintiff filed the application for amending the western side boundary of the item no. 2 of the suit schedule property as Gangaiah and Thammaiah, if the proposed amendment is allowed and change the boundary of the western side of the item no. 2 of the suit schedule property, then what about the boundary of the western side of the item

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no. 2 of the suit schedule property in the Panchaythi Parikath dated 24-6-1983 which the plaintiff relayed. Then the alleged Panchaythi Parikath will goes and the same has no any value in the eye of law. It is submitted that after lapse of 6 years, the plaintiff come with this application, on this score of application the plaintiff given wrong boundary and obtained the temporary injunction order by suppressing the material true facts by fraudulent means and as such the application is barred by law and more over the subsequent amendment to the code of civil procedure as provided under law that after commencement of the trial/evidence amendment cannot be allowed. That the proposed amendment changes the nature and cause of action of the suit. Hence, prays to reject the application.

4. Heard both the learned advocates on the I.A. Perused the pleadings and material available on record.

5. The points arise for consideration are as follows:

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1. Whether the proposed amendment is just and necessary for complete adjudication of the case on hand ?

2. What Order?

6. The findings of this court on the above said points are as under:-

Point no.1 : In the “**Affirmative**”
Point no.2 : As per order
for the following :

REASONS

7. **POINT NO.1** :- Plaintiff has filed the present suit for the relief of permanent injunction with respect to suit schedule properties against the Defendants.

8. Admittedly the suit is based on the alleged Panchaythi Parikath dated 24-6-1983, in the alleged Panchaythi

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Parikath dated 24-6-1983 the boundary of the item no. 2 of the suit schedule property towards western side is mentioned as land of Chikkathopaiah. Plaintiff is the absolute owner and in possession of the suit schedule property. Plaintiff already disclosed their case. The proposed amendment is explanatory in nature. If the amendment application is allowed, it will not cause any prejudice to the defendants. The proposed amendment is of vital importance to prove the case of the plaintiff.

9. It is well settled law that, mere delay in filing the application or bar of limitation is not the sole ground to reject the application for amendment of pleadings,

10. In a decision of our own Hon'ble High Court reported in **2007(4) KCCR 2249 (Zavuera Ferrao and another Vs. Therasa Ferrao)**, in which the Hon'ble High Court of Karnataka clearly held that:

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“That rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court.”

11. In another decision reported in **2019 SAR (Civil) 441, (Varun Pahwa Vs. Mrs.Renu Chowdary)** in which the Honb'le Apex Court held that,

“ Amendment in the pleadings cannot be refused merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure.”

The above said decisions are aptly applicable to the case in hand. In order to adjudicate the rights of the parties, the proposed amendment is quite essential. Hence, it is just and proper to allow the application. Accordingly, the Points under

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consideration are answered in the **Affirmative**.

12. **POINT NO.2** :- For the afore said discussions I answer the above point in the affirmative. Hence, the following:

ORDER

**IA No.IV filed by the plaintiff
Under Order VI Rule 17 of CPC is
hereby allowed on cost of Rs.500/-.**

(Dictated to the stenographer on-line computer, computerized by her, script revised, corrected and then pronounced by me in the open Court on this the 21st day of November, 2023).

**(Smt.Dhanalakshmi.M)
Addl. Civil Judge & JMFC,
Magadi.**