

KAUK510003772023



Presented on : 16-03-2023

Registered on : 16-03-2023

Decided on : 06-01-2026

IN THE COURT OF CIVIL JUDGE & JMFC, HALIYAL
AT: HALIYAL, UTTARA KANNADA

Dated this 6th day of January, 2026

PRESENT

Smt. Geeta. B.A.LL.B (Hon's) LL.M.,
Civil Judge and JMFC, Haliyal

ORIGINAL SUIT NO.37/2023

BETWEEN:

1. Shri. Chandrakant S/o Yallappa Shiragapur,
Age: 72 years, Occ: Agriculture,
R/o. Havagi Village, Tq: Haliyal,
Dist: Uttara Kannada.

.....Plaintiff

(By Sri. M.R.Metri, Advocate)

AND:

1. Shri. Kareemsha S/o Latifsha Latifnavar,
Age: 60 years, Occ: Agriculture,
R/o. Hosur Galli, Haliyal,
Tq: Haliyal, Dist: Uttara Kannada.

....Defendant

(By Sri. C.V.N/S.L.S., Advocates)

I.A.No.IV

**Applicant/Plff : Shri. Chandrakant S/o Yallappa
Shiragapur**

-Vs.-

**Opponent/Deft: Shri. Kareemsha S/o Latifsha
Latifnavar**

ORDER ON I.A.NO.IV

The plaintiff filed I.A No.IV under Order 6 Rule 17 R/w Section 151 of C.P.C., praying to permit the plaintiff to amend the plaint to meet the ends of justice and equity.

2. The proposed amendment is as under:

1. That in the plaint on page No.1, in the cause title of the plaint the word "**Declaration and**" shall be deleted.

2. On page no.3 para no.6, line No.6 the word "**Declaration and**" shall be deleted.

3. In Plaint para No.10, page No.4 prayer clause at serial **A)** prayer shall be deleted.

3. In the affidavit, the plaintiff stated that, he has filed this suit for the relief of declaration and permanent injunction in respect of suit schedule property bearing Survey No.54 Hissa 2 of Haliyal Village measuring 1 acre 16 gunthas. While drafting the plaint at cause title, the word "Declaration and" is typed and these words have been wrongly included in the plaint which are required to be deleted by way of amendment in order to avoid ambiguity and bring the pleadings in conformity with law. The amendment sought is bonafide and in the interest of justice. If the application allowed, no loss or hardship will be caused to the defendant, on

the contrary, he will be put to loss and hardship/ With these contentions, the plaintiff prayed to allow the application.

4. The defendant filed objections to I.A No.IV contending that, suit is one for declaration and consequential relief of injunction and the case is posted for plaintiff's evidence at this stage, the plaintiff sought for amendment and deletion of relief of declaration. Until the suit property is demarcated, the extent of encroachment cannot be ascertained. The plaintiff nowhere in the plaint has shown actual encroachment by the defendant and in which direction the encroachment is made. Hence, the application is not maintainable. It is contended that, the suit property is to be declared and actual extent of the portion of encroachment by the defendant should be demarcated. Therefore, if the amendment is allowed, it will change the nature of suit. With these contentions, the defendant prayed to reject the application.

5. Heard both counsels. Perused the records.

6. Now the points that arise for consideration are as under;

1. Whether plaintiff has made out grounds to permit him to amend the plaint?

2. What order?

7. Answers on the above points are as under;

Point No.1 : In the Affirmative

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

REASONS

8. POINT NO.1:- The plaintiff filed this suit for the relief of declaration of his ownership and consequential relief of permanent injunction and now the case is at the stage of plaintiff's evidence and he filed this application to permit him to amend the plaint and delete the word declaration at page no.1 in the cause title of the plaint and para no.10 at page no.4 prayer no. A. The defendant strongly objected to the application contending that, at this stage of the suit, application cannot be allowed and he has not made any encroachment and plaintiff has not stated actual encroachment by the defendant, therefore, the application for amendment cannot be allowed.

9. On perusal of plaint averments, the plaintiff contended that, he is absolute owner of suit property and the defendant being adjoining owner of suit schedule property is developing his land and demarcating his land for the purpose of formation of sites. In this regard, the defendant is trying to encroach upon the suit property and making road in the suit property and trying to dispossess the plaintiff and threatening plaintiff. On perusal of plaint averments, nowhere in the plaint, plaintiff stated that, the defendant denied his ownership over the suit property. Under these circumstances, the relief of declaration of his ownership sought by the plaintiff is not a necessary relief. Further, the defendant nowhere in the written statement has denied the ownership of the plaintiff over the suit property. Under these circumstances, the prayer sought by the plaintiff regarding

declaration of his ownership over the suit property has to be deleted. Now the plaintiff is seeking permission to delete such prayer in the plaint, under these circumstances, he has to be permitted to delete prayer no.1 with regard to deletion of prayer with respect to declaration. Further, if proposed amendment is allowed no hardship will be caused to defendants, therefore application has to be allowed. Accordingly, **I answer Point No.1 in the Affirmative.**

10. POINT NO.2 :- In view of discussion on Point No.1 and for the reasons stated therein, I proceed to pass the following;

ORDER

I.A.No.IV filed by the plaintiff under Order 6 Rule 17 R/w Section 151 of C.P.C., is hereby allowed.

The plaintiff is permitted to amend the plaint.

For amendment and amended plaint.

No order as to costs.

(Dictated to the Stenographer directly on system, typed by her, corrected by me, signed & then pronounced in the Open Court on this the **6th Day of January, 2026**)

Sd/-
(Geeta)
Civil Judge & JMFC.,
Haliyal