

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

PRESENT

**SRI. BHARATH CHANDRA K. S. B.A.LL.B,
CIVIL JUDGE & JMFC,
SIDDAPUR.**

Dated this the 27th day of February, 2025

O.S. No.04/2021

**Plaintiff: Parameshwara Ganapati Hegde
(By Shri M G H Adv.)**

V/s

**Defendant: Zilla panchayat and Hegde and
others.
(D-1 Ex-parte, D-2 GSH/MNH, D-3
By Shri R R H Adv.)**

I.A.No. IV

**Applicant : Parameshwara Ganapati Hegde
V/s**

**Opponent: Zilla panchayat and Hegde and
others.**

ORDER ON I.A. No.IV

The plaintiff has filed the suit against the defendants seeking the relief of permanent injunction with respect to the suit schedule property as sought in the plaint. During the pendency of the suit the plaintiff has filed the above application seeking to amend the plaint.

2. DESCRIPTION OF THE PROPOSED AMENDMENT ;
Add the following sentences in Para No. 5

“ It is submitted that, this Hon’ble court was pleased grant Ex-Parte temporary injunction on favour of the plaintiff. The plaintiff who is a company secretary by profession having his office at Bengaluru. The plaintiff during his visit native place has visited the suit land during the second week of June 2024 , found that development of Road on the suit land fully completed. It is submitted that, the development and completion of the road on suit land is violation of the order of this Hon’ble court.

Further add in Para No. 9 , Prayer column (A)(1)

Directing the defendants No.2 and 3 to vacate a new road/ obstruction put up in the suit schedule property by granting Mandatory injunction. ”

3. The plaintiff has filed this application along with a sworn affidavit stating the following facts:

The plaintiff stated in the sworn affidavit that, originally he had filed the present suit seeking injunction and this court had granted an Ex-parte temporary injunction in his favour. In the meanwhile the plaintiff is residing at Bangalore since longtime and has residential house at Kyadagi village. During his resent visit to the suit schedule property on 2nd week of June 2024 he found that the construction of the road was completed over the suit schedule property in violation of the injunction order granted by this court. Hence, sought for amendment of plaint.

4. On the other hand, defendant No. 2 has filed its objections contending that, The application is not maintainable and is likely to be rejected. The statements made in the affidavit are false or fabricated, claiming that the proposed amendment aims to alter the subject matter and cause of action of the suit. Additionally, the amendment seeking to insert the prayer for a mandatory injunction is time-barred. Hence the application deserved to be rejected.

5. The defendant No. 3 has also filed its objections contending that The application is not maintainable either on factual grounds or in law. Defendant No. 3 has categorically denied the statements made in the affidavit, asserting that the proposed amendment will alter the nature of the present suit and that the relief sought is inconsistent. Furthermore, Defendant No. 3 has clearly stated in its written statement that the road in the suit schedule property has existed for a long time, and therefore, the question of constructing a new road does not arise. It is also contended that the plaintiff deliberately failed to disclose the existence of the Kyadagi-Heggere-Hosamane road, and the present amendment is a pre-planned step taken by the plaintiff. Hence sought to dismiss the said application.

6. Upon perusal of the application and objections the following points arise for the consideration of this court :

1. Whether the plaintiff proves that, the amendment sought for is necessary for deciding the real controversy between the

parties and for arriving at a just conclusion?

2. Whether any injustice will be caused to the defendant if the application is allowed ?

3. What order?

7. Heard arguments. Perused the materials on record.

8. Perused the entire materials available on record. This court answers the above points as hereunder:

Point No.1 : In the Affirmative.

Point No.2 : In the Affirmative.

Point No.3 : As per final order for the following:

REASONS

9. Point No.1 and 2 : As these points are interrelated with each other this court has taken these points together for common discussion. Since the contentions raised in the application and objections are already narrated at the inception of this order, this court shall without repeating the same proceed to consider and discuss on the application directly, for the purpose of brevity and to avoid repetition of facts.

10. The plaintiff has filed this suit against the defendant, seeking the relief of a permanent injunction with respect to the suit schedule property, in order to restrain the defendants from constructing or developing any road over the suit schedule property. During the pendency of this suit, the plaintiff has filed this application under Order VI Rule 17 of the Code of Civil Procedure, 1908, seeking to amend the

plaint by adding a paragraph after paragraph 5 and including a new prayer in paragraph 9. The amendment is sought before the commencement of the trial, specifically before the plaintiff's evidence is presented. The plaintiff seeks to include a prayer for a mandatory injunction to properly present the case and request the appropriate relief.

11. Under Order VI Rule 17 of the CPC, the Court has the discretion to allow amendments to the pleadings at any stage of the proceedings, including before or after the trial. The purpose of this provision is to enable a party to amend the pleadings so that they accurately reflect the case being presented, allowing justice to be done between the parties. The only restriction is that the amendment must not alter the nature or fundamental character of the case, nor must it prejudice the opposite party.

12. The Court's power to allow amendments is broad, and amendments may be permitted even if they change the substance or introduce new facts, provided they do not alter the cause of action or introduce a new cause of action. It is well established that amendments to pleadings can be allowed as long as they are made in the interest of justice and do not result in irreparable harm to the other party.

13. This court, by way of an ex parte temporary injunction, had restrained the defendants from proceeding with further development of the road work over the suit schedule property. However, the plaintiff now claims that despite the ex parte

temporary injunction, Defendant No. 2 and Defendant No. 3 have completed the construction of the road over the suit schedule property. The credibility or proof of this allegation is a matter to be addressed during the trial and cannot be considered at this stage of the suit.

14. Furthermore, the facts sought to be added through the amendment are alleged to have occurred after the filing of the suit. Therefore, it cannot be expected of the plaintiff to have included these facts at the time of filing the suit. As such, the non-inclusion of the prayer and the proposed amendment was not deliberate, but rather an oversight on the part of the plaintiff.

15. The amendment sought does not alter the character of the suit or create a new cause of action; it merely extends the relief that was already claimed at the time of filing the suit. Furthermore, it is a well-settled principle that an application for amendment made prior to the commencement of trial should be considered liberally. Therefore, this Court is of the clear opinion that the amendment sought should be allowed, as it is necessary to determine the real controversy between the parties and does not cause any hardship to the defendants.

16. The Defendants have failed to demonstrate that they will suffer any prejudice or injustice if the amendments are allowed. Moreover, the amendment will not cause any delay or affect the course of the proceedings.

17. The overriding principle for allowing or disallowing an amendment is the interest of justice. Since the amendment is sought prior to the stage of plaintiff evidence, it is well within the discretion of the Court to allow such amendments, especially since the Defendants will have the opportunity to respond to the amended pleadings during the trial. In these circumstances, no injustice will be caused to the Defendants.

18. Upon reviewing the facts and circumstances of the case, this Court is of the clear opinion that the amendment sought is necessary for determining the real controversy between the parties, and no injustice will be caused to the Defendants if the application is allowed. Hence, **Point Nos. 1 and 2** are answered in the **affirmative**.

19. POINT No.3: For the findings arrived at Point No.1 and 2 this court proceeds to pass the following;

ORDER

I.A. No. IV filed by the plaintiff U/O VI Rule 17 of CPC is hereby allowed.

For amendment plaint and payment of court fees. Call on 12-03-2025.

(Dictated to the Stenographer directly on computer, after transcription, corrected, signed and then pronounced by me in the open Court this the 27th day of February 2025)

(Bharath Chandra K. S)
CIVIL JUDGE & JMFC
SIDDAPUR

