

**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 21st day of January 2025

O.S. No.32/2023

**Plaintiff: Sadeep Shetty
(By Shri S R H Adv.)**

V/s

**Defendant: The State of Karnataka and others.
(By D-1 and 2 AGP, D-3 adn 4
Exparte, D-5GSH/MNH.)**

I.A.No. IV

Applicant : Sadeep Shetty

V/s

Opponent: The State of Karnataka 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 properties 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 ;

In para No. 1(a) of the plaint site No. 3 be inserted upto the word extension KHB colony in second line.

3. The plaintiff has filed this application with sworn affidavit and he stated as follows;

The plaintiff stated in the sworn affidavit that, in description of item no.1 of suit schedule property the cite no. is not mentioned due to typographical errors. Further that the delay in filing the present application is not intentional and the amendment sought for does not prejudice the interest of the defendants or change the nature of the suit. It is submitted that if the amendment is not allowed the plaintiff will be put to great hardship injustice and irreparable loss . Hence sought to allow the application.

4. On the other hand, defendant no. 5 has filed his objections contending that, the plaintiff 's application seeking an amendment is not tenable in the eyes of the law and is liable to be rejected. The proposed amendment changes the subject matter of the suit and cause of action . Hence sought to dismiss the said application.

5. The learned AGP for defendant No. 1 and 2 filed objections contending that, the plaintiff has not clearly mentioned as to where the inclusion of the cite no 3 is to be made clearly in the application. Further that, the this belated amendment causes delay. 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 permanent injunction with respect to the suit schedule property seeking to restrain the defendant from interfering with the possession and enjoyment over the suit

schedule property. During the pendency of this suit and after the commencement of trial i.e after the matter is now posted for further chief of PW 1, the plaintiff has filed the present application seeking to amend the plaint. At this juncture, it is relevant to go through the provisions of Order VI Rule of 17 of CPC to ascertain whether an application can be entertained to amend the pleadings, after the commencement of trial, if yes, under what circumstances?.

The extract of order **VI rule of 17 of CPC** is as here under:

[17. Amendment of pleadings.]—*The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such 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:*

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.

A bare reading of the proviso to the above rule would suggest that no applications seeking amendment shall be allowed after the trial has commenced. However, there is discretion that has been vested in this court to allow the

application even after the commencement of the trial, if it is established that application could not have been brought prior, in spite of due diligence.

11. The object of Rule 17 is to minimize the litigation, minimize the delay and to avoid multiplicity of suits. Therefore it has been included to do justice and not to shut out justice merely on technicality of pleadings. Rule 17 was considered by Hon'ble Supreme Court in **P.H. Patil vs. K.S. Patil**, wherein it was held that “Courts should by the merits of the cases that come before them and should consequently allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

12. The cardinal test for deciding an application for amendment is that :

(i) Whether the amendment is necessary for the determination of the real question in controversy ?

(ii) Can the amendment be allowed without injustice to other side ?

If the first condition is satisfied that the amendment is necessary to decide the “real controversy” between the parties, the amendment should be allowed. In other words, if there is no necessity to decide the “real controversy” between the parties, the amendment should not be allowed.

Like the first condition, the second condition is also equally important, **AIR 1957 SC 363 5** according to which, no amendment will be allowed which will cause injustice to the opposite party. It is settled law that the amendment can be allowed if it can be made without injustice to the other side. But it is also a cardinal rule that “there is no injustice if the other side can be compensated by costs.”

13. With the backdrop of the aforementioned legal provisions and the decisions of the Hon'ble Apex Court, this Court has carefully considered the amendment sought by the plaintiff in the plaint. Upon review, it is found that the amendment sought merely clarifies and helps in identifying the item No. 1 of the suit schedule property. The amendment does not introduce a completely new set of facts or defenses. Furthermore, the amendment is necessary to resolve the real controversy between the parties. The present amendment is not changing entire subject matter of the suit but only mentions the property number, which helps in giving clarity. Further the objections raised by the learned AGP that the plaintiff has does not clearly mentioned as to where the amendment is to be included is not tenable, the plaintiff has clearly stated in his application as to where exactly the amendment is to be added. This amendment is crucial for determining the real issue between the parties and does not cause any hardship to the plaintiff. Accordingly, Point No. 1 and 2 is answered In the **Affirmative**.

ORDER

I.A. No. IV filed by the defendants U/O VI Rule 17 of CPC is hereby allowed on cost of Rs.300/-.

For further chief of PW 1 . Call on 24-02-2025.

(Dictated to the Stenographer directly on computer, after transcription, corrected, signed and then pronounced by me in the open Court this the 21st day of January 2025)

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

