

**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 16TH day of November, 2024

O.S. No.52/2019

Plaintiff: Ganapati Kanna Naik Lrs.

Kamalakar Ganapati Naik

(By Shri MRP Adv.)

V/s

Defendant: Mahabala Ganapa Gouda and others

(By Shri GSH/MNH Adv.)

I.A.No.V

Applicant : Kamalakar Ganapati Naik

V/s

Opponent: Venkatramana Thimma Naik

(By Shri G S H/MNH Adv.)

ORDER ON I.A. No. V

The plaintiff has filed the suit against the defendants seeking the relief of mandatory 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 ;

1. ವಾದ ಪತ್ರದ 1 ನೇ ಪುಟದ 2 ಪ್ಯಾರಾ 2 ನೇ ಸಾಲಿನಲ್ಲಿಯ 0-17-08 ಎಂದು ಇರುವುದನ್ನು ತೆಗೆದು ಹಾಕಿ 0-18-08 ಎಂದು ಸೇರಿಸುವುದು
2. ವಾದ ಪತ್ರದ 1 ನೇ ಪುಟದ 3 ಪ್ಯಾರಾ 4 ನೇ ಸಾಲಿನಲ್ಲಿಯ 0-17-08 ಎಂದು ಇರುವುದನ್ನು ತೆಗೆದು ಹಾಕಿ 0-18-08 ಎಂದು ಸೇರಿಸುವುದು
3. ವಾದ ಪತ್ರದ 3 ನೇ ಪುಟದ 11 ಪ್ಯಾರಾ 3 ನೇ ಸಾಲಿನಲ್ಲಿಯ 0-17-08 ಎಂದು ಇರುವುದನ್ನು ತೆಗೆದು ಹಾಕಿ 0-18-08 ಎಂದು ಸೇರಿಸುವುದು
4. ದಾವಾ ಪ್ಯಾರಾ 10, 1 ರ ಪ್ರಾರಂಭದಲ್ಲಿ ದಾವಾಸ್ತಿಯು ವಾದಿಯರ ಮಾಲೀಕತ್ವದ ಹಕ್ಕಿನ ಆಸ್ತಿ ಎಂದು ಠರಾಯಿಸಿ ಎಂದು ಸೇರಿಸುವುದು .

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

The plaintiff stated in the sworn affidavit that, the suit schedule property is the property bearing Sy. No 48/2 measuring 18 gutnas 08 annas, out of 37 guntas excluding 4 gutnas Kharab. Further that, the said property is under possessions and enjoyment of the plaintiff. However do to typing mistake it has been wrongly mentioned 00-17-08 annas instead of 00-18-08 annas. Further that the original the entire extent of suit Sy No. 48/2 belong to the father of the plaintiff named Ganapati Kanna Naik and Parvati Bhaskar Naik jointly. Subsequently they divided the suit schedule Sy number $\frac{1}{2}$ each i.e measuring 18-08 annas each. Further after his death the revenue records has been transferred the name of the plaintiff. Further that, the defendants have put up electric poles over 02 gutas of land

belonging to the plaintiff. Hence, it is necessary to amend the plaint as sought for. Thus it is expedient to interest of justice to allow the application filing which irreparable loss will be cost to be plaintiff.

4. On the other hand, defendants No. 5 have filed his objections contending that, the application is not maintainable and it is liable to be rejected as it is filed after commencement of trial the application is highly belated and cannot be entertained. If the proposed amendment is allowed it will be changed the nature of suit, cause of action and subject matter will be altered. Hence, sought to dismiss the said application.

5. 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 defendants if the application is allowed ?
3. What order?

6. Heard arguments. Perused the materials on record.

7. 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

8. 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.

9. The plaintiff has filed this suit against the defendants seeking the relief of mandatory injunction with respect to the suit schedule property seeking the direction against the defendant to remove electric line that has been put up on 2 gutnas of land belonging to the plaintiff in the suit schedule property. During the pendency of this suit and after the commencement of trial i.e after part examination in 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.

10. 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.

10. 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, 1 **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.”

11. 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. The application seeks to rectify a typographical error in the measurement of the suit schedule property, specifically correcting the measurement from "00-17-08 annas" to "00-

18-08 annas." Such an amendment is purely corrective in nature and does not, in any way, alter the substance or the nature of the suit as alleged by the defendant. The amendment will not cause any irreparable loss or injury to the defendant, as it is only a clarification of a factual error.

12. Furthermore, the plaintiff has sought to include a prayer for the declaration of title over the suit schedule property. However, it is pertinent to note that the plaintiff has already averred in the body of the plaint that they are the absolute owners of the suit schedule property and that the defendant has encroached upon 2 guantas of land by erecting electric poles and lines on the property. Therefore, the inclusion of the prayer for declaration of title does not change the nature of the suit but only provides clarity to the dispute. The prayer is in line with the existing claim, and does not introduce any new facts or cause a shift in the fundamental nature of the suit.

13. In light of the above, this Court is of the view that the proposed amendments are not only necessary to correct errors and provide clarity but also do not cause any prejudice to the defendant. The amendments sought are thus allowed, as they do not alter the character of the suit or introduce any new claims that would substantially change the dispute. Hence, Point No. 1 and 2 is answered In the **Affirmative**.

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

ORDER

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

(Dictated to the Stenographer directly on computer, after transcription, corrected, signed and then pronounced by me in the open Court this the 16th day of November 2024)

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

