

**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 15th day of January 2025**

**O.S. No.64/2020**

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

**V/s**

**Defendant: Shri Subray Bangareshwar Hegde  
(By Shri P M H Adv.)**

**I.A.No. IV**

**Applicant : Shri Subray Bangareshwar Hegde  
V/s**

**Opponent: Shri Laxminarayan Hegde**

**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 ;  
Paragraph No. 3**

In Line No. 11: The plaintiff's father refused to honour his obligation under the arrangement by virtue of which

about 00-11-00 guntas of land was transferred in favour of the defendant's father.

**Delete the sentence:**

the plaintiff's father refused to honour his obligation under the arrangement by virtue of which about 0-11-00 guntas of land was not transferred in favour of the defendant's father

**and insert the sentence:**

The plaintiff's father refused to honour his obligation under the arrangement by virtue of which about 00-05-08 of land was not transferred in favour of the defendant's father from out of the 00-18-00 guntas that was agreed to be transferred.

**To read as:**

The plaintiff's father refused to honour his obligation under the arrangement by virtue of which about 00-05-08 of land was not transferred in favour of the defendant's father from out of the 00-18-00 guntas that was agreed to be transferred.

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

**3.1.** The defendant stated in the sworn affidavit that, when he recently reviewed the certified copy of the written statement, he realized that some facts had been omitted. Consequently, he examined old revenue records and, after studying them, briefed his advocate to include a few additional lines in the written statement.

**3.2.** Despite exercising due diligence, this error occurred. Therefore, the defendant respectfully seeks the leave of this Hon'ble Court to amend the written statement in the interest of justice and equity.

**3.3.** The proposed amendment does not in any way contradict the reliefs sought or the facts presented in support of the same. There has been no substantial progress in the case, and therefore, no prejudice will be caused to the plaintiff.

**3.4.** If the amendment is not permitted, the defendant will suffer great hardship, and irreparable legal injury will be caused. On the other hand, if the application is allowed, no hardship will be caused to the plaintiff. Hence, sought for amendment of plaint.

**4.** On the other hand, plaintiff has filed his objections contending that, the defendant's application seeking an amendment is not tenable in the eyes of the law and is liable to be rejected. The proposed amendment introduces a new plea from the defendant, which is not permissible under the law. If the amendment is allowed, it would alter the nature and subject matter of the suit. 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 defendant 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?

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 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 cross of PW 1, the defendant has filed the present application seeking to amend the written statement. 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.

**11.** 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.”

**12.** 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 defendant in the written statement. Upon review, it is found that the amendment sought merely clarifies the contention raised by the defendant. 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, as the defendant specifically contends that certain land was agreed to be exchanged between the father of the plaintiff and the defendant. However, the plaintiff's father did not honor the arrangement, despite the defendant's father fulfilling his part of the contract. Consequently, the defendant asserts that a portion of the land was not transferred into the name of his father. The defendant now seeks to amend the extent of land that was not transferred to his father's name. 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 defendant 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 15<sup>th</sup> day of January 2025)

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

