

KAUP010005952024



R.A./18/2024

**IN THE COURT OF THE II ADDITIONAL DISTRICT AND
SESSIONS JUDGE, UDUPI**

**Present
Sri.A.SAMIULLA.**

B.Sc, LL.B.,

**II Additional District & Sessions Judge,
Udupi**

Dated: 19th Day of July 2025

RA.No.18 of 2024

Smt.Rajeevi Shedthi & Ors.

.....Appellants

V/s

Smt.Sumathi Shedthi & Ors.

.....Respondents

IA.No.VII

Smt.Rajeevi Shedthi & Ors.

.... Applicants/Appellants

V/s

Smt.Sumathi Shedthi & Ors.

....Opponents/Respondents

**Order on IA-VII; u/O 6 Rule 17 r/w Section 151
of CPC:**

Appellants moved this application seeking permission to amend the plaint schedule item-1 by rewriting Sy.No.16/9 as Sy.No.18/9.

2. Respondents have not filed any statement of objections.

3. Heard arguments on main appeal along with application for amendment of plaint.

4. Following point arises for consideration:

Whether the proposed amendment is necessary for the complete and effective adjudication of lis?

5. Answer to the above point is in **affirmative** for the following;

REASONS

6. At the outset; suit is filed for declaration to declare that the plaintiffs are owners of suit properties; for perpetual injunction to restrain the defendants from obstructing their possession and for the rectification of entries in the revenue records by asserting that; the suit properties originally owned by their grandfather Nandiyappa Shetty, who executed a registered settlement deed dated 07.06.1947 in favour of his daughters, who were in possession of the suit

properties and after their demise they are in possession of the same. Defendants have no manner of right over the suit properties despite they are claiming right from their mother Laxmi Shedthi in whose favour one Vittal Shetty had executed a registered settlement deed dated 07.11.1977, wherein it is indicated that he has purchased the lands in a Court auction sale held in REP.No.978-1957 dated 08.02.1958. Even though there is a Court auction sale the said Vittal Shetty did not acquire any title as the possession was not delivered to him because the judgment debtors were not in possession of said land. Merely because the defendants are mutated as owners of schedule lands, they did not acquire any title over the suit lands. Hence, suit is filed.

7. Defendant-5 filed written statement, which is adopted by the defendants-1 to 4, 6 & 7 by contending that; Vittal Shetty purchased the Sy.No.17/19 (0.79

acres) of Kavadi Village along with other properties in Court auction sale in REP.No.978/1957. Said Vittal Shetty conveyed his right in favour of Laxmi Shedthy under settlement deed dated 07.11.1977 and after her death the defendants-1 to 7 being her children are the owners in possession of said property. Plaintiffs have no right over the said land. Hence, prayed to dismiss the suit.

8. After contest the Trial Court dismiss the suit vide judgment and decree dated 17.04.2008 and 02.06.2008 respectively, which is impugned herein.

9. After registration of appeal; notice was issued. Respondents-2 to 7 appeared through their learned counsel Sri.AKA. Respondent-1 remained absent.

10. Appellants filed the application at hand for the relief stated *supra* by asserting that; while filing this suit by his mother and other two family members

against the defendants by mistake the suit item-1 was indicated as S.No.16-9 instead of S.No.18-9 and said mistake was left unnoticed by them; their advocate; the defendants; their advocate and even by the Trial Court. The erroneous mentioning of suit item-1, even judgment and decree was also passed and even while filing the appeal also this material mistake was left unnoticed. But while getting ready for argument by their present advocate, this material defect was noticed by him and the same was brought to their knowledge and then only for the first time they came to know of the mistake crept in the plaint and as such immediately they have filed this application. It was a bonafide mistake and it was crept in by oversight while typing the plaint, which was left unnoticed till this day. Said mistake is neither intentional nor deliberate. Proposed amendment does not change the nature of the suit and no hardship will be caused to

the other side. Hence, prayed to allow the application.

11. Respondents have not objected the application.

12. It is well settled principle that; all amendments ought to be allowed which satisfy two conditions viz., not working injustice to the other side and of being necessary for the purpose of determining the real questions in controversy between the parties.

13. Here, the specific case of plaintiffs is that; the suit properties originally belonged to their grandfather Nandyappa Shetty, who executed a settlement deed dated 07.06.1947 in favour of his daughters through whom they (plaintiffs) are claiming title.

They placed reliance on the documents Ex.P1 to P5. Ex.P1 & 3 are the RTC extracts of land in Sy.No.18/9. Ex.P5 is certified copy of registered settlement deed dated 07.06.1947, wherein the land in Sy.No.18/9 is one of the properties involved in the

settlement. But in the plaint schedule the item-1 is described as Sy.No.16/9, which is not involved in the title deed i.e., settlement deed dated 07.06.1947.

These facts manifest that; by a typographical error the mistake is crept in describing suit item-1. Under these circumstances if said mistake is not rectified the plaintiffs will be subjected to great hardship which cannot be compensated by any means. On the other hand no such prejudice will be caused to the other side because the entire burden of proof is on the plaintiffs to prove their title and possession over the said land. In addition to this the proposed amendment is absolutely necessary to determine the real questions in controversy. The proposed amendment will not alter the nature of suit.

14. It is worth to note that; the rule of amendment is indeed a rule of justice, equity and good conscience.

The power of granting amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court. Amendment is granted unless the party seeking amendment acts mala fide. Here, there is no mala fide on the part of plaintiff in seeking amendment, which is necessary for complete adjudication of lis.

That apart, in a case of Sajjan Kumar Vs. Ram Kishan, **(2005) 13 SCC 89**, it is held that; *incorrect description of property should be allowed to be corrected by amendment at any stage to bring the real question in controversy between the parties to the fore. Refusal to amend will create complication at the stage of execution.* In the backdrop of discussion *supra* coupled with the dictum laid in the decision above point is answered in affirmative and proceeds to pass the following;

ORDER

IA-VII; under Order VI R 17 r/w Section 151 CPC
filed by the appellants is allowed.

Appellants are permitted to carry out
amendment of plaint schedule item-1.

No order as to costs.

(Dictated to the Stenographer and transcribed by her, corrected and
initialed by me and then pronounced in the open Court on 19.07.2025).

(A.Samiulla)
II Addl. District & Sessions Judge,
Udupi