

**IN THE COURT OF PRINCIPAL CIVIL JUDGE AND
JUDICIAL MAGISTRATE FIRST CLASS AT KUNDAPURA**

**Present : SMT. SHRUTHI SHREE S, *B.A. LL.B.*
Prl. Civil Judge & J.M.F.C.,
Kundapura.**

Dated this the 26th day of September, 2023

Original Suit No. 56/2020

Parties to I.A. No. IV:

Applicant/s: Sri. R. Ravi
(By Advocate Sri/Smt. M.M.H.)

//Vs//

Opponent/s: 1) The Executive Engineer, the Karnataka
Neeravari Nigam Ltd., and others

**(By Advocate Sri/Smt. K.B.S. for D1
D2 and D3 - Exparte)**

Parties to the suit:

Plaintiff : Sri. R. Ravi
V/s

Defendant : 1) The Executive Engineer, the Karnataka
Neeravari Nigam Ltd., and others

i.	Provision under which the application is filed	Order VI Rule 17 R/w Sec. 151 of CPC
ii.	Relief sought for	Amendment of plaint
iii.	The date on which the application is filed	16-06-2020
iv.	Number of application	IV
v.	The date on which the objections are filed by different opponents	19-02-2021
vi.	The date on which the orders were passed on the said application	26-09-2023

ORDERS ON I.A. IV

Counsel for plaintiff has filed I.A. No. IV U/O VI rule 17 R/w Section 151 of CPC seeking to amend the plaint as sought for.

2. In the accompanying affidavit, applicant/ GPA holder of plaintiff has contended that the plaintiff instituted the suit for the relief of permanent prohibitory injunction restraining defendants from trespassing or removing or laying road over any portion of suit schedule property. After issuance of emergent notice to defendants, they having filed objection before this Court commenced formation of road illegally over portion of suit land on 26-02-2020 which was complained before Shankarnarayana Police Station and thereafter also completed the process of laying road by width of 4 meters and length of 390 links running South to North and width of 35 feet and length of 789 link running from East to West over Eastern portion and Northern portion respectively over suit land illegally and highhandedly. Defendants are bound to remove the same and restore the suit land to its original condition. In view of subsequent developments plaint has to be suitably amended for adjudication of real dispute. Accordingly seeks to allow the I.A.

3. Per contra, defendants filed objections contending that they have taken possession of portion of suit 'A' schedule property and instead of praying for possession, have merely sought for mandatory injunction which is not maintainable. Plaintiff ought to have prayed for possession of suit 'A' schedule property before asking for mandatory injunction. Hence this application is devoid of merits and deserves to be rejected.

4. I have heard the learned counsels for both the parties and perused the record.

5. The point that arise for my consideration is:-

P O I N T S

1) Whether the plaintiff has made out sufficient grounds to allow I.A., No. IV filed under order VI Rule 17 R/w Sec. 151 of CPC?

2) What order?

6. My answer to the above points are as under;

Point No.1: In the **affirmative**

Point No.2: As per the following:-

R E A S O N S

7. **Point No.1:** This application was filed by plaintiff while suit was posted for hearing on I.A. III.

8. It is contention of plaintiff in this suit that defendants are trying to trespass and lay road over portion of suit 'A' schedule property. Initially exparte interim injunction was also sought by the plaintiff whereas it is alleged now that defendants have illegally laid road over portion of suit 'A' schedule property. Also averments in the accompanying affidavit so also the application reveals the alleged extent were the road is laid down. Also the averments by itself reveals that the said road is laid down after filing of the suit which is also admitted by defendant. Only contention of defendants is that plaintiff ought to have sought for recovery of possession. Such contention can be appreciated only by discussing merits for grant of mandatory injunction and while discussing maintainability of this application, nothing in that regard can be looked into.

9. Averments of the application and accompanying affidavit clearly makes out further happening of event and based on subsequent development so also the alleged act of laying road over portion of 'A'

schedule property would be necessary for adjudication and also if any such road is laid during the pendency of the suit, it needs to be adjudicated for arriving at final conclusion of controversy. Therefore it is necessary that in view of the amendment sought being within the period limitation while the application was filed, is permitted to make such amendment to the plaint averments for adjudication for further events after filing of this suit. Hence this application deserves consideration. Hence **point No.1** is answered in the **Affirmative**.

10. Point No.2: In view of findings on point No. 1, I proceed to pass the following:

O R D E R

I.A. No. IV filed by plaintiff U/o VI
Rule 17 R/w Sec. 151 of CPC is hereby
allowed.

Plaintiff is hereby permitted to
amend plaint as sought for.

(Dictated to the stenographer, directly on computer, corrected by me and then pronounced in the open Court on this **26th day of September, 2023**)

(Smt. Shruthi Shree S.)
Prl. Civil Judge & J.M.F.C.,
Kundapura.