

**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 12th day of December, 2023

Original Suit No. 28/2011

Parties to I.A. No. VI:

Applicant/s: Sri. Naresh Kumar Shetty
(By Advocate Sri/Smt. M.M.H.)

//Vs//

Opponent/s: Sri. K. Sachidananda Hegde
(By Advocate Sri/Smt. G.S.K.S.)

Parties to the suit:

Plaintiff : Sri. Naresh Kumar Shetty

V/s

Defendant : Sri. K. Sachidananda Hegde

i.	Provision under which the application is filed	Order VI Rule 17 R/w Sec. 151 of CPC
ii.	Relief sought for	Amendment
iii.	The date on which the application is filed	08-08-2023
iv.	Number of the application	I.A. No. VI

v.	The date on which the objections are filed by different opponents	25-09-2023
vi.	The date on which the orders were passed on the said application	12-12-2023

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ORDERS ON I.A. VI

Plaintiff has filed present I.A. No. VI U/O VI rule 17 R/w Sec. 151 of CPC seeking to amend plaint as sought for.

2. In the accompanying affidavit, it is contended that the present suit is filed for declaration of plaintiff as absolute owner of Sy. No. 251 new sy no. 534 of Molahalli Village which is situated within Mud agalu dare and Beli or fence. Excluding land sold to Anatha Kulal and M Rathnakara Shetty and consequential relief of permanent injunction.

3. Defendant Sold 10 acres of land in favour of Ramakrishna Bhandari on 11-02-1999 and thereafter sold 4.40 acres to plaintiff on 21-11-2006. Therefore based on 2 sale deeds, 14.40 acres of land is acquired by plaintiff. Believing that the entries made in RTC are proper, without getting land surveyed he purchased the said property, but after

appointment of commissioner in OS NO. 188/2010 with similar dispute, after commissioner filed report which was different from order of Tahashildar and Assistant Commissioner, Kundapura, mutated RTC in favour of defendant was challenged in W.P. No. 3153/2019 and as per order dated 21-02-2022, impugned order was set aside. Thereafter Tahashildar, Kundapura, conducted ETS survey of Sy. No. 251 of Molahalli village on 13-07-2023, where it was found that actual extent within boundaries of sy, No. 251 is 16.23 acres. Therefore after properties sold in favour of Ratnakara Shetty and Anath Kulal, what remained with defendant was 14.88 acres. These facts are necessary to be pleaded in the plaint. Therefore seeks to make their claim for 14.40 acres instead of 14 acres as sought for.

4. Per contra, defendant has filed objections contending that accuracy of ETS survey is not accepted by him, Sy No. 251 measured 16.23 acres or not is immaterial as vendor of plaintiff namely Ramskrishna Bhandarkar had purchased the area of the land within the boundaries which would prevail over the extent. Therefore neither plaintiff nor his vendor are entitled to claim more extent than what is within the boundary of sketch annexed to sale deed. Therefore plaintiff cannot claim more than what he has purchased. As per sale deed plaintiff

purchased 14.40 acres but by way of this amendment he is claiming 14.88 acres which is impermissible. Also amendment seeking for substituting the amount is not maintainable. Further the amendment sought is barred by limitation. Therefore seeks to reject the IA.

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

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

POINTS

- 1) Whether applicant/plaintiff has made out sufficient grounds to allow I.A., No. VI filed under order VI rule 17 R/w Sec. 151 of CPC?
- 2) What order?

7. My answer to the above point are as follows;

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

Point No.2: As per the final order
for the following:-

REASONS

8. **Point No.1:** This application was filed by plaintiff while suit was posted for defendant evidence contending that after ETS survey, actual extent available reveals that as per sale made by defendant in

favour of Rathnakar shetty and Anath Kulal would be 14.88 acres. Whereas plaintiff was under impression that he was only in possession of 14 acres as he did not get the land surveyed prior to purchase. Documents relied upon by plaintiff also reveals that he had purchased 4.40 acres from defendant under 2 sale deeds. Further in the year 1999, 10 acres of land was already sold in favour of one Ramakrishna Bhandarkar who inturn sold the said property to plaintiff. Whereas plaint recitals reveal that plaintiff had sought for declaration only for 14 acres of land tough he purchased 14.40 acres.

9. Per contra defendant contends that he do not admit the survey conducted through ETS but only boundaries would prevail. Looking into the amendment sought, plaintiff is intending to make claim for actual extent he purchased as after conducting ETS survey, he has found out that actual extent that remain after sale of property in favour of Rathnakar Shetty and Ananth Kulal was 14.88 acres. Therefore he is in possession of the actual extent purchased by him i.e. 14.40 acres and not 14 acres only as claimed earlier. Accordingly he is intending to replace the figures which describes valuation of property for further extent to which relief is sought. Hence this Court being satisfied with regard to the

extent that is claimed through this application, also deems it appropriate to allow the plaintiff to make amendment as per para 1 and 2 of the application.

10. However in respect of amendment sought under para no. 3 to 5 of application replacing figures in para no. 4, 7 and 8 of plaint has no valid reason stated in the accompanied affidavit. But in view of relief being amended for 14.40 acres instead of 14 acres, valuation from Rs. 4,62,000/- to 4,75,200/- seems appropriate. But to replace value of cut trees from Rs. 35,000 to Rs.24,800/- has no considerable reasons. That apart as objected by defendant, claim of plaintiff for including 0.40 acres presently is necessary or not can only be ascertained after trial. But to appreciate such objections of defendant that plaintiff is claiming more than what he has purchased is bald as plaintiff has restricted his claim to actual extent he has purchased.

11. In order to effectively adjudicate controversy between the parties, delay in making application would not be a valid ground to refuse amendment as to facilitate non multiplicity of proceedings. Though contention that amendment sought is time barred is arguable but such

amendment made would only be effective from the date of amendment but not from the date of filing of the suit. Therefore this court is of the considered view that amendment has to be allowed with riding effect from this date but not from the date of suit.

12. But as stated above only part of the amendment sought can be allowed for their being justified reasons. Hence **para no. 1 to 3 and 5** of application can only be considered and **para no. 4** deserves to be rejected. Therefore for all the above stated reasons, **Point No.1** is answered **partly in the affirmative**.

13. **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. VI filed by plaintiff U/O VI Rule 17 R/w Sec. 151 of CPC is hereby allowed in part.

plaintiff is permitted to amend plaint para 3, 7 and 8 along with schedule column of the plaint.

Application seeking amendment for para 4 of plaint is hereby rejected.

It is clarified that the amendment shall be deemed effective from the date of application and not the date of suit.

(Dictated to the stenographer, directly on computer, corrected by me and then pronounced in the open Court on this **12th day of December, 2023**)

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

SNT/-