

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

Present : SMT. ROHINI. D, *B.A. LL.B.*
II Addl. Civil Judge & J.M.F.C.,
Kundapura.

Dated this the 19th day of October, 2024

Original Suit No. 239/2009

Plaintiff/s: Nashiruddin Saheb, 47 years
S/o Late Khadir Saheb,
R/o Siddapura Village and Post,
Kundapura Taluk, U.D.
-Represented by GPA Holder
S.K. Vasudeva Pai, S/o Late K. Krishna Pai,
R/o Siddapura Village and Post
Kundapura Taluk, U.D.

(Rep. by Advocate Sri/Smt. M.S.S)

//Vs//

Defendant/s: 1. T.G. Srinivasa Pai, 70 years
S/o Gopalakrishna Pai,
R/o Siddapura Village and Post,
Kundapura Taluk, U.D.

2.The Grama Panchayath,
Siddapura, Kundapura Taluk, U.D.
-Rep. By its P.D.O.

(Rep. by Advocate Sri/Smt. P.S.R)

I.A. No. XIII

Applicant/s : Nashirudin Saheb
V/s

Opponent/s : 1. T.G. Srinivasa Pai and another

ORDER ON I.A. NO. XIII FILED UNDER ORDER VI
RULE 17 R/W SECTION 151 OF CPC.

The plaintiff has filed this application Under Order VI Rule 17 R/w Section 151 of CPC seeking permission for amendment of the plaint.

2. It is stated in the accompanying affidavit that on 10-08-2024 in the morning the 1st defendant and eight other persons trespassed into the plaint 'A' schedule property belonging to the plaintiff and started to construct new pent roof over western portion of the 'A' schedule property. Then he went to the spot and seriously objected for the said illegal acts of the 1st defendant and his people, but ignoring his serious objections the said persons continued the said illegal construction work over the property of the plaintiff. Now the 1st defendant and his people put up a new pent roof structure measuring 15 feet length and 10 feet width by trespassing into western portion of the 'A' schedule property. The 1st defendant was required to leave not less than 3 feet width statutory margin on the eastern side of the 'B' schedule property, but the 1st defendant has done construction over the 'B' schedule property without leaving any statutory margin and also he has constructed new pent roof structure measuring 15 feet length and 10 feet width over the 'A' schedule property belonging to the plaintiff. The plaintiff is not in a position to remove the said illegal construction done over portion of the plaint 'A' schedule property. The 1st defendant is very rich and powerful and having high level influence. The said illegal structure is required to be removed by the order of the Court. If the annexed application is allowed nobody will be put to any hardship. To meet the ends of justice,

for the final adjudication of the dispute and to avoid multiplicity of litigations the application is required to be allowed. Hence prays to allow the application.

3. The defendant has filed objection stating that the application filed by the plaintiffs is false, frivolous and not maintainable either in law or on facts. Plaintiffs have suppressed true and material facts before this Court in order to make illegal gain. The plaintiff is seeking to drag on the suit by filing the false and frivolous applications. The amendment proposed by the plaintiff is beyond the scope of this Court. The plaintiff is seeking a prayer for mandatory injunction with regard to the suit schedule properties. The plaintiff avers that the cause of action for the new prayers have arisen recently in 2024. Thus, not only the plaintiff seek to change the nature of the suit from mere injunction to one for possession in the guise of mandatory injunction. The plaintiff is also seeking to change the very cause of action of the suit, that too after completion of evidence in the present case. The said amendment is barred by the very provision of Order VI Rule 17 of CPC. Allowing the amendment would amount to pushing back the case to its initial stage and Ordering for a de novo trial, which will achieve nothing but humiliate and harass the defendant. If the application is allowed, the defendants will be put to irreparable loss and injury, which cannot be compensated at a later date. On the other hand, no prejudice will be caused to anyone. Hence prays to dismiss the application.

4. Heard the arguments on both sides and perused the records.

5. On the basis of the application and the objection the points that arise for the consideration of the Court are:

//POINTS //

1. Whether the plaintiff has made out the grounds to allow the application?

2. What order?

6. My answer to the above points are as follows:

Point No.1 : In the Affirmative

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

//REASONS//

7. POINT NO. 1: The plaintiff has filed this suit against the defendants for the relief of mandatory injunction and for permanent injunction with respect to suit 'A' schedule property. The plaintiff by way of amendment wants to plead that on 10-08-2024 the defendant No. 1 along with other persons trespassed into the suit 'A' schedule property belonging to the plaintiff and started to construct new pent roof over western portion of the 'A' schedule property. The GPA holder of the plaintiff went to the spot and seriously objected, but ignoring the objection of the GPA holder of the plaintiff the defendant No. 1 and his people have put up a new pent roof structure measuring 15 feet length and 10 feet width by trespassing into western portion of the 'A' schedule property. The defendant No. 1 has done construction over the 'B' schedule property with out leaving statutory margin and also constructed new pent roof structure over the 'A' schedule property also. The said illegal construction over the portion of 'A' schedule propriety required to be removed by the order of the Court and also seeking mandatory

injunction to remove the construction put up over the portion of 'A' schedule property.

8. Order VI Rule 17 of CPC reads as under:

“ 17. Amendment if 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”

9. In this suit the application has been filed at the stage of arguments. Mere filing an application for amendment at the stage of argument is not a ground for refusal of the amendment. The subsequent event necessitated the plaintiff to seek the proposed amendment. The proposed amendment is necessary for the complete justice in this suit and for the purpose of determining the real controversy between the parties. The main object of the provision is to avoid multiplicity of the suit. If this application is not allowed it will cause injustice to the plaintiff. The party cannot be refused for amendment merely because of application filed at the stage of arguments. Considering the facts and circumstances of the case this Court is of the opinion that in order to avoid multiplicity of the proceedings the application needs to be allowed in the interest of justice. **Hence I answers the point No. 1 in the AFFIRMATIVE.**

10. POINT NO.2 : For the discussions made above the Court is of the opinion that the plaintiff is entitled to the relief claimed in the IA No. 13. Hence this Court proceed to pass the following:

//O R D E R//

**I.A. No. XIII filed by the applicant/
plaintiff under Order VI Rule 17 R/w Sec.
151 CPC is hereby allowed.
No order as to cost.**

(Dictated to the Stenographer, typed by her, corrected and signed by me and then pronounced in the Open Court on this 19th day of October, 2024)

**(Rohini. D)
II Addl. Civil Judge & J.M.F.C.,
Kundapura.**