

KAUP400018302023



**IN THE COURT OF CIVIL JUDGE AND JUDICIAL
MAGISTRATE FIRST CLASS AT BAINDURU.**

PRESENT:

Smt.Vidya, A.S. B.A., LL.B.
Civil Judge & J.M.F.C.,
Bainduru.

Dated this the 31st day of March 2023

New Original Suit No.371/2023

Old Original Suit No.288/2017

Plaintiff	Sri. Vittal, Aged about 62 years, S/o.Chowki Subba Kharvi, R/at: Koderi of Kirimanjeshwara Village, Kundapura Taluk.
Defendants	1. Sri. Chandra, Aged about 38 years S/o. Marli and Durga, R/at: D.No.22/V of Koderi, Kirimanjeshwara Village, Kundapura Taluk. 2. Sri. Rama, Aged about 36 years S/o. Marli and Durga, R/at: D.No.22/V of Koderi, Kirimanjeshwara Village, Kundapura Taluk. 3. Sri. Laxman, Aged about 34 years S/o. Marli and Durga, R/at: D.No.22/V of Koderi, Kirimanjeshwara Village,

	<p>Kundapura Taluk.</p> <p>4. Sri. Raghavendra, Aged about 32 years S/o. Marli and Durga, R/at: D.No.22/V of Koderi, Kirimanjeshwara Village, Kundapura Taluk.</p> <p>5. Sri. Veerabhadra, Aged about 30 years S/o. Marli and Durga, R/at: D.No.22/V of Koderi, Kirimanjeshwara Village, Kundapura Taluk.</p>
	<u>Rank of the Parties On I.A.VI</u>
Applicant/Plaintiff:	Vittal
	(Rep. by Sri. M.M.H- Advocate)
Opponents/Defendants:	Chandra and others
	(Rep. by Sri.G.S.K.S- Advocate for defendant No.1, 3 to 5) (defendant No.2 - Exparte)

ORDER ON I.A. NO. VI

The application filed by the plaintiff under Order VI Rule 17 R/w. section 151 of CPC seeking permission of the Court to amend the plaint.

2. In the accompanying affidavit, the applicant has stated that, the defendants in their written statement have denied the lease and falsely set up title over the suit premises by adverse possession. The said plea raised by the defendants

in the suit O.S No.11/2013 on the file of the Court of senior civil Judge Kundapura was rejected and the said suit of the defendant was dismissed on 31-08-2019. In view of the said subsequent developments since the suit is incidentally based on title, now he prayed for the relief of possession of the suit building and he ready to pay necessary Court fee for the said relief. Therefore, it is prayed that in order to avoid uncalled multiplicity of the proceedings the amendment now sought may be allowed in the interest of justice and equity. The subject matter will not be changed and amendment now sought will not change the nature of suit or cause of action. With these averments the applicant has sought for allowing the application.

3. Per contra, opponent has filed objection to the said application, contending that, the original suit is based on the Land-lord and tenant relationship. The suit is filed after terminating the said alleged tenancy. Such a summary suit cannot be converted into a title suit. The applicant cannot represent the title holder and suit is bad for the non-inclusion of the entire body of the alleged title holders. The suit as stood and framed still continues as the one based between the landlord and tenant and it is due termination as the cause of

action. With these contentions the opponent has sought for rejecting the application.

4. Heard the argument of the learned counsel appearing for the parties and perused the material on record.

5. Now, the following points arise for consideration of this Court are:

Point No. 1:Whether the proposed amendment is necessary for the purpose of determining the real question in controversy between the parties?

Point No. 2:Whether the proposed amendment change as the nature of the suit or cause of action?

Point No. 3: What order?

6. The findings of this Court on the above said points are as under:

Point No.1: In the Affirmative;

Point No.2: In the Negative;

Point No.3: As for the final order

for the following:

REASONS

7. **Points No.1 and 2:** : On perusal of case file, it is seen that the plaintiff has instituted suit for delivery of vacant

possession of suit schedule premises with future profits from the date of suit till delivery of possession.

8. Now, for ready reference, order VI Rule 17 is extracted here below:

17. Amendments 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”.

9. The object of Order VI Rule 17 is to minimize the litigation, minimize the delay and to avoid multiplicity of suits. In this case, the applicant has stated that, the defendants in their written statement have denied the lease and setup title over the suit premises by adverse possession. The said adverse possession plea raised by the defendants in suit O.S.No.11/2013 was rejected and the said suit of the defendants was dismissed.

10. The amendment now sought is based on subsequent events, which have occurred after disposal of O.S.No.11/2013. The proposed amendment does not completely change the nature of the suit as alleged by the defendnats. The amendment are required for effective and proper adjudication of the controversy between the parties and to avoid multiplicity of proceedings. The amendment does not cause injustice or prejudice to the other side. The plaintiff has made out sufficient grounds to allow the application. With these observations, this court has answered point No.1 in the affirmative and point No. 2 in the Negative.

11. Point No.3: For the aforesaid discussion on point No.1 and 2, this Court proceeds to pass the following:

ORDER

I.A.No.VI filed by the applicants under Order VI Rule 17 of CPC is hereby allowed.

The plaintiff is permitted to amend the plaint as mentioned in the application.

No order as to costs.

**For amendment and amended
plaint.**

Call on: 13-04-2023.

(Dictated to the stenographer, transcribed and typed by her,
corrected by me and then pronounced in the open Court on this
31st day of March, 2023)

[Smt.Vidya.A.S]

**Civil Judge & J.M.F.C.,
Bainduru.**