KABI200013372023

IN THE COURT OF THE CIVIL JUDGE & JMFC.,
AT: HAGARIBOMMANAHALLI

DATED THIS THE 12th DAY OF SEPTEMBER- 2025

PRESENT

Sri. SAYED MOHIUDDIN URF KHAWAJA PEERAN, B.A., LL.B. (Spl.),
CIVIL JUDGE & JMFC., HAGARIBOMMANAHALLI

O.S.No.156/2023

PLAINTIFF/s : 1) **Smt.Annapurnamma W/o late Hanasi Prasannappa,**
Aged about: 72 years, Occ: Agriculturist,
R/o: Ittigi Village, Huvinahadagali Taluk,
Vijayanagara District.

2) **Smt.Kousalyamma D/o late Hanasi Prasannappa W/o C.Shivappa,**
Aged about: 55 years, Occ: Agriculturist,
R/o: Thambrahalli Village, H.B.Halli Taluk,
Vijayanagara District.

3) **Hanasi Basavaraja S/o late Hanasi Prasannappa,**
Aged about: 53 years, Occ: Agriculturist,
R/o: Ittigi Village, Huvinahadagali Taluk,
Vijayanagara District.

4) **Hanasi Channabasappa S/o late Hanasi Prasannappa,**
Aged about: 50 years, Occ: Agriculturist,
R/o: Ittigi Village, Huvinahadagali Taluk,
Vijayanagara District.

5) **Hanasi Kotresh S/o late Hanasi Prasannappa,**

Aged about: 47 years, Occ: Agriculturist,
R/o: Ittigi Village, Huvinahadagali Taluk,
Vijayanagara District.

6) **Hanasi Basavalingappa S/o late Hanasi Prasannappa,**
Aged about: 43 years, Occ: Agriculturist,
R/o: Ittigi Village, Huvinahadagali Taluk,
Vijayanagara District.

Vs.

DEFENDANTS/s: 1. **Aralihalli Eshappa S/o Kavalappa,**
Aged about: 68 years, R/o 5th Ward, Ittigi Kote, Ittigi Village, Huvinahadagali Taluk, Vijayanagara District.

2. **Dodda Basavaraja S/o Muniyappa,**
Aged about: 40 years, R/o 5th Ward, Ittigi Kote, Ittigi Village, Huvinahadagali Taluk, Vijayanagara District.

3. **Sanna Basavaraja S/o Muniyappa,**
Aged about: 35 years, R/o 5th Ward, Ittigi Kote, Ittigi Village, Huvinahadagali Taluk, Vijayanagara District.

4. **Aralihalli Suresh S/o A.Eshappa,**
Aged about: 50 years, R/o 5th Ward, Ittigi Kote, Ittigi Village, Huvinahadagali Taluk, Vijayanagara District.

5. **Aralihalli Ravi S/o A.Eshappa,**
Aged about: 54 years, R/o 5th Ward, Ittigi Kote, Ittigi Village, Huvinahadagali Taluk, Vijayanagara District.

6. **Aralihalli Jayappa S/o A.Eshappa,**
Aged about: 50 years, R/o 5th Ward, Ittigi Kote, Ittigi Village, Huvinahadagali Taluk, Vijayanagara District.

I.A.No.IV

APPLICANT/PLAINTIFF/s: **Smt.Annapurnamma W/o late Hanasi Prasannappa & others,**

(Rep. by Sri.**K.M.G.,** Advocate.)

Vs.

RESPONDENTS/DEFENDANTS/s: **Aralihalli Eshappa S/o Kavalappa and others**

(D1 to 6 Rep. by Sri.**P.V.S.,** Advocate.)

:ORDER ON I.A. No.IV FILED BY THE PLAINTIFFS UNDER ORDER VI RULE 17 of CPC:

The plaintiffs have filed the present I.A.No.IV under Order VI Rule 17 of CPC., to amend the plaint.

The proposed amendment is as under :-

SCHEDULE

In the plaint schedule item No.2 is mentioned as land bearing Sy.No.20, measuring 5.24 acres instead of land bearing Sy.No.19 totally measuring 7.09 acres out of which 2.76 acres and boundaries are also not mentioned to the item No.2 of the suit schedule property.

Hence, in the plaint schedule item No.2 property is to be insert as " the land bearing Sy.No.19/A, measuring 7.09 acres out of

which 2.76 acres situated at Nelkuduri Village within the Sub-Registration District of H.B.Halli, Registration District of Vijaynagara is bounded as under;

East : The Land of Arali Eshappa

West : The Land of Uluvatti Shivakka

North: The Lands of Jambappa, Muniyappa & Jagadappa in the same survey number

South: Road.

2. In the accompanying affidavit to the IA, it is stated by the plaintiff No.3 that, they have filed the present suit against the defendants for the relief of permanent injunction with respect of suit schedule properties. At the time of filing of the suit, instead of mentioning the suit item No.2 as Sy.No.19A measuring 7.09 acres out of which 2.76 acres, Sy.No.20 measuring 5.24 acres was mentioned and boundaries of the suit item No.2 was also not mentioned in the plaint schedule. The said mistake was crepted due to the typographical error. The said amendment is necessary to decide the suit. If the application is allowed no injustice will be caused to the other side, If the application is not allowed

they will be put to hardship. Hence, they prays to allow the IA.

3. To the said application, the defendants have filed objections and denied the entire contention of the plaintiffs, and further contended that the plaintiffs have filed false application without any proper reasons. Sy.No.19/A total measuring 7 acres 9 cents is jointly standing in the name of Sri.Muniyappa S/o Kavalappa, Sri.Kildeda Jagadappa S/o Shivanagouda, Sri.A.Manohara S/o Dodda Jayappa and plaintiff No.1 jointly. The above said persons are not made as parties to the suit, therefore the said application is not maintainable. The plaintiff No.3 examined before the Court as PW1, document Ex.P1 to P13 were marked. The plaintiffs have not produced any document with respect of Sy.No.19/A. At this stage the application filed by the plaintiffs is not maintainable. Hence they prays to dismiss the application.

4. Heard the arguments and perused the records.

5. The following points arise for my consideration:

1. **Whether the plaintiffs have made out proper grounds to allow the I.A.No.IV?**

2. What order?

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

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

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

R E A S O N S

7. **Point No.1** :- The present suit is filed by the plaintiffs against the defendants for the relief of permanent injunction with respect of the suit schedule properties. In the present case on hand, PW1 examined before the Court. When the case was posted for further examination in chief of PW1 the plaintiffs have filed the present application for amendment of plaint.

8. Order **6 Rule 17** of ***Civil Procedure Code., 1908*** provides as under**:**

> ***"17. Amendment 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. I have perused the material available on record. The plaintiffs have filed the present suit against the defendants for the relief of permanent injunction with respect of suit schedule properties. I have perused the schedule of the plaint, in the plaint schedule the plaintiffs shown the suit item No.1 Sy.No.20 measuring 5.24 acres with specific boundaries. Further the same survey number and extent has been shown in the plaint schedule as suit item No.2, no specific boundaries are mentioned to the suit item No.2. According to the plaintiffs due to typographical error the said mistake was crepted in the plaint, as such they prays to allow the application and permit them to amend the plaint.

The defendants have objected for the said amendment. On going through the same it appears that the said amendment will not introduce any new facts. The said amendment will not withdrawn any admissions and further it appears that, the said amendment is necessary for determining the real question in controversy between the parties. The said amendment will not change the nature of the suit and not set up an entirely new case. The said amendment is appeared to be necessary for avoiding the multiplicity of proceedings.

10. In the reported decision **(2022) SCC Online SC 1128 (Life Insurance Corporation of India vs. Sanjeev Builders Private Limited & Anr.)** in **Para No.70** of the said Judgment the **Hon'ble Supreme Court of India** held as under.

> ***70. Our final conclusions may be summed up thus: (i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far***

beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed.

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is malafide, or

(iv) by the amendment, the other side loses a valid defence.

(v) <u>In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs</u>.

(vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a

more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the

relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi & Ors., 2022 SCC OnLine Del 1897).

On looking through the facts and circumstances of the case, I am of the opinion that if the said amendment application is allowed no injustice will be cause to the defendants. Mere allowing for amendment of pleadings does not means that same is proved. The burden of proving the same as per amendment is lies on the person who sought the amendment. Furthermore, the defendants have full opportunity to file the additional written statement to contest the suit. If the said application is not allowed it cause injustice to the plaintiffs and further it amounts to multiplicity of the proceedings. If the said application is allowed on cost it would meets the ends of justice. On the basis of above reasons and discussion, I hold **Point No.1** in the **AFFIRMATIVE**.

11. Point No.2 :- For the aforesaid reasons and discussions made above I proceed to pass the following: -

O R D E R

I.A.No.IV filed by the plaintiffs under Order VI Rule 17 of CPC., is hereby allowed on cost of Rs.500/-.

The plaintiffs are permitted to amend the plaint as prayed in the IA.

(Dictated to the Stenographer, transcribed and computerized by her, corrected by me, and then pronounced in the open court on this the ***12th day of September 2025.****)*

(SAYED MOHIUDDIN URF KHAWAJA PEERAN)
CIVIL JUDGE & JMFC., HAGARIBOMMANAHALLI