

KADG420002552010



IN THE COURT OF THE CIVIL JUDGE AT HARAPANAHALLI.

**Present : Shri.Manu Sharma S.P.,
B.A.LAW.LL.M.
Civil Judge and JMFC, Harapanahalli**

Dated this 11th day of September 2025

OS No.24/2010

PLAINTIFF/s

1. Kumari D.V.Jyothi D/o
D.Venkanagowda, Age about 25 years,
Occ: Advocate.
2. D.V.Maheshwari D/o
D.Venkanagowda, Age about 23 years,
Occ: Doctor, through GPA holder
D.Venkanagowda, S/o Late Rudra
Gowda, Aged about 67 years, R/o
Shree Kalakrupa Nilaya, Near Shri
Shankara Mata, Harihara-Hosapete
Raod, Harapanahalli, Harapanahalli
Taluku, Davanagere District.

(Partly in person.,)

-Vs.-

DEFENDANT/s

1. Chief Officer, Town panchayath,
Harapanahalli.
2. H.Althaf S/o Dadu Sab, Aged about
32 years, Bismilla Hotel owner, R/o
Shri Anjineya colony, Harihara-
Hosapete Road, Harapanahalli,
Davanagere District.

3. D. Imbran Bhasha S/o D.Kalandhar Sab, Major, Stamp writer and municipal councillor, R/o near Tayi Hunasimara, Harapanahalli town, Vijayanagara District.

**(D.2 & 3 By Sri. B.K.M. Adv)
(D1 Placed exparte)**

ORDER ON IA No.IX

**PLAINTIFF
/s/APPLICANT/s**

1. Kumari D.V.Jyothi D/o
D.Venkanagowda, Age about 25
years, Occ: Advocate.

2. D.V.Maheshwari D/o
D.Venkanagowda, Age about 23
years, Occ: Doctor, through GPA
holder

D.Venkanagowda, S/o Late Rudra
Gowda, Aged about 67 years, R/o
Shree Kalakrupa Nilaya, Near Shri
Shankara Mata, Harihara-Hosapete
Raod, Harapanahalli, Harapanahalli
Taluku, Davanagere District.

-Vs.-

**DEFENDANT/s/OPPONE
NT/s**

1. Chief Officer, Town panchayath,
Harapanahalli.

2. H.Althaf S/o Dadu Sab, Aged about 32
years, Bismilla Hotel owner, R/o Shri
Anjineya colony, Harihara-Hosapete Road,
Harapanahalli, Davanagere District.

3. D. Imbran Bhasha S/o D.Kalandhar Sab,
Major, Stamp writer and municipal
councillor, R/o near Tayi Hunasimara,
Harapanahalli town, Vijayanagara District.

ORDER ON IA No.IX

1. Plaintiff has filed application under Order VI Rule 17 read with Section 151 of CPC for amendment of plaint as shown in Para Nos. 4 and Para Nos. 5 of the affidavit filed in support of the application. It is stated in the affidavit that the prayers incorporated in the suit are not sufficient to accomplish the purpose of the suit and hence it is necessary to amend the plaint by incorporating the relief of recovery of possession. And by way of proposed amendment plaintiff has also sought to add one more schedule as 'B' to the plaint. It is stated in the affidavit that defendant no. 2 has encroached upon the suit schedule property and hence it is necessary to seek the relief of possession against him. Based on said contentions, plaintiff prayed for allowing the application.

2. Defendant no.2 has filed objection to the application denying the case of the plaintiff and contending inter alia that no grounds are made out for allowing the application and application is filed by the plaintiff to prolong the case and no supportive documents are produced by the plaintiff in support of the proposed amendment. Defendant no. 2 has further stated that proposed amendment will change the nature of the suit. Based on said contentions, defendant no. 1 prayed for rejection of the application..

3. Based on application and counter the following points arise for my consideration:-

1] Whether Plaintiff has made out grounds to allow application?

2] What Order?

4. Heard both sides.

5. My answers to the above points are as here under:-

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

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

REASONS

6. **Point No.1:-** Plaintiff has sought to amend the plaint by adding the relief of recovery of possession and by adding schedule to the plaint as mentioned in Para No.4 and 5 of the affidavit in support of the application. It is to be noted that in the present case evidence has not commenced, and hence if amendment is permitted no prejudice will be caused to the defendants as they will have a chance to cross examine the Plaintiff on all material points.

7. It is to be noted that, when deciding application for amendment correctness of amendment need not be looked into. In the decision of the Honorable High Court of Karnataka reported in Venkatalaxmi and Others V. V.Padma and Others, 2016 (1) KCCR 181, it was held that, merits of amendment shall not be deciding

factor when deciding the amendment application. It would indicate that, correctness of the amendment shall be considered at the time of final hearing of the case.

8. Plaintiff has produced decision of Hon'ble High Court of Karnataka reported in 2019 Volume 1 KC CR 271 to contend that amendment can be permitted to rectify the typical errors in the pleadings.

9. Plaintiff has cited decision of Hon'ble High Court of Karnataka reported in Laws KAR 2008 Volume 8 49 and decision reported in LAWS KAR 2016(1) 307 wherein it was held that amendment may be permitted to curtail the multiplicity of proceedings.

10. Plaintiff has cited a decision of Hon'ble Supreme Court of India reported in AIR 2018 Supreme Court 2635 wherein it was said that amendment is to be permitted if it would not change the nature of the suit.

11. Plaintiff has cited another decision of Hon'ble High Court of Karnataka reported in Laws KAR 2015 Volume 6258 and LAWS KAR (10) 198 wherein it was held that amendment is required to be permitted if such amendments are necessary for the purpose of deciding the controversies involved in the suit.

12. Plaintiff has cited another decision of Hon'ble High Court of Karnataka reported in 2017 Volume 4 KCCR 3168 wherein it was held that the amendment can be allowed even at the stage of arguments if such amendment does not prejudice the interest of the parties.

13. Plaintiff has cited decision of the Hon'ble Supreme Court of India reported in 2023 Volume 1 KCCR 1 SC wherein it was heard that amendment of prayer can be permitted, and there is no absolute Rule that if relief is barred by limitation, amendment cannot be permitted.

14. Plaintiff has cited decisions reported in 2008 Volume 1 GLH 341 and Another decision of Hon'ble High Court of Karnataka reported in 2019 Volume 4 KCCR 13. wherein it was held that the amendment can be permitted in respect of description of property and also measurement of the property.

15. Plaintiff has cited another decision reported in 2021 Volume 1 KCCR 404 of Hon'ble High Court of Karnataka wherein it was held that the amendment can be allowed in respect of boundaries of the suit schedule property.

16. Plaintiff has cited decision of Hon'ble High Court of Karnataka reported in 2019 Volume 2 KCCR 1531 wherein it was

held that amendment to add the properties can be allowed even at the belated stage of the proceedings.

17. Plaintiff has cited another decision of Hon'ble Supreme Court of India reported in 2019 Volume 2 KCCR SN 84 wherein it was said that, mistake, negligence, inadvertence or even infraction of Rules of procedure are not grounds to refuse amendment. Since said decisions throw light on the well settled principles of law, it is not necessary to discuss the said decisions at length.

18. Plaintiff has produced another decision of Hon'ble High Court of Karnataka reported in Laws Kar 2016 Volume 2 338 In which, doctrine of relation is explained. Here it is to be noted that when Plaintiff instituted the suit he sought for prayer to issue direction to Defendant No.2 to vacate the hotel. But now as per proposed amendment Plaintiff is seeking to add the relief of recovery of possession by directing the Defendant No.2 to hand over the possession of the suit schedule property. It is clear from the original relief and proposed relief that Plaintiff is not seeking to add the relief as cause of action arose subsequent to filing of the suit. It is not the case of the Plaintiff that he was unaware of the alleged encroachment or events transpired subsequent to filing of the suit. So, doctrine of relation back is not applicable to the proposed amendment relating

to relief of recovery of possession and amendment is to be allowed subject to limitation. In view of the same there is no legal impediment to allow the application subject to limitation. However, delay on the part of Plaintiff in filing the application is to be compensated by imposing cost. Hence, I answer Point No.1 in the **Affirmative.**

19. Point No.2:- For the reasons stated above I am of the considered opinion that application is to be allowed by imposing cost. In the result, the following:-:-

ORDER

The application filed by the Plaintiff U/order 6 Rule 17 R/w Section 151 of CPC., is hereby allowed on cost of RS.300/-.

The Plaintiff is permitted to amend the plaint as prayed for in Para No.4 and 5 of the affidavit filed in support of the application.

It is made clear that doctrine of relation back is not applicable to the amendment of relief and subject to law of

limitation amendment of relief is
permitted.

(Dictated to the typist directly on the computer, typed by him, the transcript revised and corrected by me, and then pronounced in the open court on this **11th Day of September 2025.**)

**(Manu Sharma S.P.)
Civil Judge and JMFC.,
Harapanahalli.**

In accordance with law. With these observations
memo Dtd:01.01.2023 stands disposed off.

11.09.2025

**Civil Judge and J.M.F.C.,
Harapanahalli.**

(Vide separate order)

**Order pronounced in the Open Court
vide Dt.11.09.2025.**

: ORDER :

The application filed by the Plaintiff
U/order 6 Rule 17 R/w Section 151 of
CPC., is hereby allowed on cost of
RS.300/-.

The Plaintiff is permitted to amend
the plaint as prayed for in Para No.4 and
5 of the affidavit filed in support of the
application.

It is made clear that doctrine of
relation back is not applicable to the
amendment of relief and subject to law
of limitation amendment of relief is
permitted.

11.09.2025

**Civil Judge and J.M.F.C.,
Harapanahalli**

For amendment by 19-09-2025.

11.09.2025

**Civil Judge and J.M.F.C.,
Harapanahalli**

