

**ORDER BELOW EXH. 22**

(Dated - 03/07/2023)

The plaintiff moved this application under Order 6 Rule 17 of the Code of Civil Procedure, for permission to carry out amendment in the plaint.

02] According to plaintiff, defendant is his real brother. Property bearing Nazul Sheet no. 4 Plot no. 622 is having total area of 118.8 Sq. Meters. Out of it, a plot admeasuring 24 feet East-West and 15 feet South-North, which comes under Gram Panchayat Chandur Biswa, is owned and possessed by plaintiff. Since 07/08/2022, the defendant was trying to threaten the possession of plaintiff. Anticipating the threat of encroachment, the plaintiff on 22/08/2022 issued notice through his learned advocate contending therein not to start any illegal construction over plaintiff's property. However, the defendant did not reply the said notice and started construction of bathroom and toilet on vacant land of plaintiff from South-East side. During pendency of Temporary Injunction application, the defendant has completed construction by erecting Bathroom, toilet and stairs on plaintiff land and also by encroaching over government road.

03] It is further asserted that, towards the eastern side of plaintiff's land there is north-south road having width of 10 ft and during construction the defendant has encroached over the said government road and on 15 ft area from southern to northern side. Plaintiff also wish to amend the prayer clause 2 of the main plaint by inserting relief of possession and four boundaries of the suit property. Lastly,

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amendment is sought to the effect of deleting portion relating to demolition of half made construction as pleaded in main plaint.

04] The learned advocate for the defendant filed his say below Exh.23 and opposed the application of plaintiff. He contended that, proposed amendment will change the nature of suit and is also against the law. Deleting admissions is not permissible by law. Proposed amendment is nothing but result of after thought. Amendment in four boundaries is sought only after written statement came to be filed by defendant. Hence, he prayed to reject the application with costs.

05] Perused the record and heard learned advocate representing the parties. Heard learned counsel of both sides. Considering the contentions of rival parties, documents on record and hearing advanced by learned counsel of both sides, following points arise for determination and my findings against each of them for the reasons are given below:

<b>Sr. No.</b>	<b>Points</b>	<b>Findings</b>
1.	Whether the proposed amendment is necessary for the purpose of determining the real question in controversy between the parties?	..Yes.
2.	What order ?	Allowed as per final order.

**REASONS**

**AS TO POINTS NO. 1 and 2:-**

05] This suit is for permanent mandatory injunction and declaration. At the outset it is desirable to mention here that, in the present case trial is yet to be commenced. The amendment is sought at very early stage of the trial when the case was fixed for framing issues. Perusal of the proposed amendment goes to show that, during pendency of this suit, construction as alleged by plaintiff is already completed by defendant. It appears that, proposed amendment which is sought is based on event which had happened *pendente lite*. It is a matter of record that meanwhile TI application was also filed by plaintiff seeking relief of restraining the defendant from carrying out construction. The said application came to be rejected. In view of this, naturally since the completion of construction is a development happened subsequently to the filing of this suit and during *pendente lite*, plaintiff could not expected to bring it on record before it could happen and thus in this way, the proposed amendment becomes necessary and important in order to decide the real controversy between the parties.

06] Similarly, since it is contended that construction is raised over land belonging to plaintiff *pendente lite*, it becomes incumbent on the plaintiff to seek ancillary relief of possession. Thus, amendment to that effect also becomes necessary.

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07] As far as deletion of pleadings is concerned, I have gone through the said portion which the plaintiff wants to delete. It goes to show that, it was pertaining to demolition of half made construction. Since the construction is completed, such pleadings become irrelevant and thus it cannot be said that plaintiff is withdrawing any admissions.

08] Further, plaintiff also sought to amend the four boundaries of suit property. By way of this amendment plaintiff wish to describe correctly the boundaries of suit property. Perusal of pleadings of defendants i.e written statement goes to show that, four boundaries which the plaintiff wish to add are already admitted to them. Thus, as such amendments in that regard being undisputed one, it deserves to be allowed.

09] In this case, the trial is yet to be commenced hence no prejudiced will be caused to defendant if the application is allowed, since he has every opportunity in hand to contest the suit. The object behind amendment of pleadings is to protect the rights of the parties. Moreover, the plaintiff is not seeking change of relief claimed in main suit, then it cannot be stated that proposed amendment will changes the nature of the suit. The amendment is not inconsistent with the pleadings in the main petition but it is based on subsequent events. Hence, as such, I do not find any impediment in allowing the present application. Hence, I answer point No. 1 in **affirmative**.

10] Thus, in the light of above made dissuasion, the application deserves to be allowed and hence, in answer to point no.2, I proceed to pass the following order.

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**ORDER**

- 1] Application is allowed.
- 2] Plaintiff is permitted to carry out the proposed amendment in the plaint as mentioned in this application on or before next date.
- 3] Plaintiff to pay appropriate court fee in view of the newly added relief of possession.
- 4] Cost in cause.

(Order pronounced in open Court)

Sd/-

Nandura.  
03/07/2023

**[Megha D. Dajjuka]**  
Jt. Civil Judge Junior Division, Nandura.