

R.C.S. No.128/2017.  
Sanjay Vs. Panchappa

**ORDER BELOW EXH. NO.42**

1. This is an application filed by plaintiff under order VI rule 17 of C.P.C.
2. According to plaintiffs they are filed present suit for declaration of their ownership and perpetual injunction. In present suit they are filed application for measurement of suit property. As per order of this court the Dy. S. L. R. AUSA has completed measurement on 16.5.2018. The court commissioner has filed his report. In report court commissioner found that plaintiff has not possessed land and defendants are committed encroachment on his land. Therefore plaintiff wanted to add pleading accordingly and prayer of possession. They lastly prayed for allowing application.
3. Defendants are filed their say at Exh. No. 44. They denied all allegations, prayer and pleading. According to them they not committed any encroachment on land of plaintiff. The application is not maintainable. The application is false one. They lastly prayed for rejection of application.
4. Heard learned advocate Shri. A. G. Kulkarni for plaintiffs and U. B. Patil for defendant No. 1 to 3.
5. Perused record, application and say.
6. On perusing record it appears that the plaintiffs suit is for declaration of ownership and perpetual injunction. In present suit plaintiffs are filed application at Exh. No. 29 for measurement of suit property. My predecessor has allowed that application and T. I. L. R. AUSA has been appointed as court commissioner for measurement of suit property. As per order of this court T.I.L.R.

Ausa has completed measurement and filed report at Exh. No. 29. In report court commissioner shown that the plaintiff has not possessed land as per revenue record. The less land is in possession of plaintiffs. The plaintiff wanted to add pleading in respect of encroachment and prayed possession of encroachment. The trial of present suit not commenced. The purposed amendment does not change nature of suit. The purposed amendment is necessary for determining real question between parties. The purposed amendment does not harmful to the defendant. Considering above situation in my opinion application needs to be allowed. Hence I pass following order.

#### O R D E R

1. The application is allowed.
2. Permission is granted to plaintiff to amend the pleading accordingly.
3. plaintiff is hereby directed to carry out the amendment within 14 days.
4. No order as to costs.

Date:- 25/03/2019.

(S. P. Jadhav)  
Jt. Civil Judge, J.D., AUSA.