

IN THE COURT OF THE CIVIL JUDGE JMFC,
PONNAMPET.

PRESENT : Sri.Shrinath A, B.A.L, L.L.B.,
Civil Judge & JMFC.,
Original Suit No.34/2017

Dated this the 6th day of July 2026

Plaintiffs : Sri.K.R.Ruthvi Kariappa,
S/o: K.K.Ravi,
Age: 21 years,
R/o: Kirguru village,
Ponnampet Post,
Virajpet Taluk, Kodagu.

Represented by GPA,
Sri.K.K.Ravi,
S/o: Late K.G.Kariappa,
Age: 62 years,
Post Box No.18,
Ponnampet Post Office,
R/o: Kirgoor village,
Ponnampet Post,
Virajpet Taluk, Kodagu.

(By Sri.K.P.Bopanna, Advocate)

-Vs-

Defendants: :1. Sri.S.G.Prakash,
S/o: Late Gangadhara,
Age: 40 years,
R/o: Mathoor village,
Ponnampet Post,
Virajpet Taluk, Kodagu.



2. Sri.S.G.Ganesh,
S/o: Late Gangadhara,
Age: 40 years.
R/o: Mathoor village,
Ponnampet Post,
Virajpet Taluk, Kodagu.

3. Sri.S.G.Premavathy,
W/o: Late Gangadhara,
Age: 70 years,
R/o: Mathoor village,
Ponnampet Post,
Virajpet Taluk, Kodagu.

(By Sri.M.E.M, Advocate)

PARTIES TO I.A.XXV

**DEFENDANTS/ :
APPLICANT**

Sri.S.G.Prakash and Others,

-V/s.-

**PLAINTIFF/
OPPONENT :**

Sri.K.R.Ruthvi Kariappa, Rep. by
his GPA Holder Mr.K.K.Ravi

**ORDERS ON I.A.NO.XXV FILED BY THE DEFENDANTS
UNDER ORDER VI RULE 17 OF CPC**

The advocate for defendants have filed for amendment of written statement contending that these defendants are the owners of counterclaim schedule property and has



narrated the facts in the form of pleadings to ascertain the ownership over the said property bearing Sy.No.121/3. Further has prayed to direct the plaintiff to hand over the possession of counterclaim schedule property, and for permanent prohibitory injunction to restrain the plaintiff from interfering in the said property and to dismiss the suit of the plaintiff by narrating the cause of action.

2. In the affidavit it is submitted that defendant no.1 that after of completion of evidence court commissioner was appointed to survey the disputed property and it is seen that plaintiff has encroached the counterclaim schedule property which belongs to the defendants. This defendant is claiming ownership over the suit property and therefore by view of counterclaim has filed this application to include the counterclaim by way of amendment. Hence prays to allow the application.



3. Plaintiff files objections that at the stage of arguments, counterclaim cannot be entertained. The defendants are including the new property which is not consent to the plaint suit property and therefore by inclusion of such amendment of the counterclaim, it would cause prejudice to the plaintiff and would delay the proceedings. At the stage of arguments the counterclaim cannot be filed by the defendants as per the decisions of the Hon'ble courts and as per the law. Since the property of the defendants so claimed is different from the plaint suit property, the question of counterclaim does not arise. Further the amendment to the pleadings after commencement of trial is also not permissible. Hence prays to dismiss the application.

4. Heard advocate for plaintiff and defendants.



5. On perusal, following points are arise for my consideration:-

1. Whether the defendants have made out grounds to include counterclaim by way of amendment?
2. What order?

6. My answers to the aforementioned points are as under :

Point No.1	:	In the Negative,
Point No.2	:	As the final order for the following.

REASONS

7. **POINT NO.1 :-** The suit is for recovery of possession of B schedule property which is property bearing Sy.No.121/1 of Mathoor village and for permanent prohibitory injunction. The said relief claimed against the defendants. From the plaint schedule properties, the subject matter of the property is bearing Sy.No.121/1, this application for amendment is filed in the stage of arguments, wherein it is contended by the defendants that



they are the owners of property bearing Sy.No.121/3 and that the said property is in possession of plaintiff and is seeking for recovery of such possession. This amendment application has arose because of the said identification of the said fact which these defendants came to know by the court commissioner report. It is seen from the record the plaintiff has no objections to the commissioner report and on the other hand the defendants have filed objections to the commissioner report contending that the survey has not been done in accordance with the permanent boundary marks and the original survey stones. Therefore on one hand these defendants object the commissioner report and on the other hand has filed this application seeking for prayer for recovery of possession of the alleged encroached portion of property bearing Sy.No.121/3 as seen in the survey report. Therefore on the point that the property



claimed by plaintiff and the property claimed by the defendants are of different survey numbers and therefore the question of recovery of possession of counterclaim schedule property by defendants in this suit cannot be entertained.

8. Further it is pertinent to note that the proposed amendment of including the counterclaim for recovery of possession of different property is filed at the stage of arguments. From perusal of the survey report this property noted in the counterclaim schedule property bearing Sy.No.121/3 is situated in the other portion apart from the one so claimed by plaintiff in B schedule property. Therefore the said fact cannot be adjudicated in this suit. Moreover there is no such pleadings in the earlier written statement filed by the defendants with regarding to such claim over the property bearing Sy.No.121/3. Further the cause of



action shown for such counterclaim is dated 16.02.2026 when the survey was conducted by surveyor appointed by the court commissioner. Since the property shown in the counterclaim is different and because of the fact that there is no claim of possession in the earlier written statement over the alleged counterclaim schedule property, at the stage of arguments such counterclaim cannot be entertained as it would cause prejudice. It is further pertinent to note that it is only upon the court commissioner report that this application has been filed claiming title over the said property. The said counterclaim is not permissible in law to be filed at the stage of arguments even though it is claimed that he has come to know about such fact of possession of counterclaim property with the plaintiff. Since the properties are different and the fact that defendants are disputing the



commissioner report by filing the objections, such amendment would destruct in adjudicating the claim of plaintiff. The only remedy for the defendants is to file separate suit, therefore pleadings by way of amendment to the written statement with regarding to flow of title and of the prayers of possession of prohibitory permanent injunction cannot be entertained in this suit and hence for the above reasons point no.1 is answered in the Negative.

9. **Point No.2:-** In view of the forgoing observations and discussions, this court proceed to pass the following :-

ORDER

The application filed by the defendants under order VI Rule 17 of CPC is hereby dismissed.

(Dictated to the stenographer, transcribed and computerized by him, then corrected, signed and pronounced by me in open court on this the 6th day of July 2026)

- sd -
(Shrinath A)
Civil Judge & JMFC
Ponnampet.

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