

**IN THE COURT OF THE XIII ADDL.CITY CIVIL AND  
SESSIONS JUDGE**

Mayohall unit: Bengaluru **(CCH:22)**

Dated this the 8<sup>th</sup> day of September, 2017

**PRESENT:** - Sri.B.NARAYANAPPA. M.A.. LL.B,  
XIII Addl. City Civil and Sessions Judge,  
Bengaluru.

**OS No. 26717 / 2013**

Plaintiff :- Sri N. Venkateshappa  
V/s.

Defendant :- Sri Rajanna

**ORDERS ON IA FILED BY THE PLAINTIFF**  
**UNDER ORDER VI RULE 17 R/w. SEC. 151 OF C.P.C.**

The plaintiff has filed IA under Order VI Rule 17  
R/w. Sec. 151 of CPC through his counsel praying to permit  
him to amend the plaint as per the proposed amendment.

2. The IA is supported by the affidavit of the  
plaintiff by name Sri N. Venkateshappa, wherein he has  
stated that he is the absolute owner of the suit schedule  
property. The schedule property originally belonged to  
Muniyappa, who acquired the same under registered sale  
deed dated 6.2.1937. In the said sale deed the description of  
the schedule property is mentioned as East by Chinnappa's

property, West by Agasara Ramaiah's House, North by Road and South by Road and measurement of the schedule property is not mentioned. But in the sale deed it is contended that there is a house measuring to an extent of 2 Ankana i.e., 400 Sq. Ft. alongwith it there is an Angala and Hithilu measuring to same extent. Even though the exact measurement is not mentioned, under law the boundaries prevail on the property and accordingly the schedule property is measured as 800 Sq. Ft. including Hittalu and Angala measuring to an extent of 400 Sq. Ft. As on date the boundaries mentioned in the sale deed still exists. Sri Muniyappa died leaving behind his only son Sri M. Nanjappa to succeed to the schedule property. Sri M. Nanjappa died on 3.10.1999 leaving behind his wife Smt. Narayanamma and their only son viz., plaintiff to succeed the estate. Smt. Narayanamma died on 30.4.2012. The plaintiff got transferred Khatha in his name and he is in peaceful possession and enjoyment of the suit schedule property. In the Khatha Extract issued by Bruhath Bengaluru Mahanagara Palike the extent of schedule

property was mentioned as 20 x 20 feet i.e., 400 sq. ft. instead of 800 sq. ft. The B.B.M.P. has not taken into consideration Hittilu and Angala measuring to an extent of 400 Sq. Feet. Hence, he filed application before the Asst. Commissioner, B.B.M.P. to rectify the mistake. The defendant who has no manner of right, title and interest over the schedule property on 8.11.2013 interfered with the peaceful possession and enjoyment of the suit schedule property contending that he is the owner of schedule property by removing fence. In spite of grant of injunction, the defendant is taking law in to his hands and violated the order of injunction and encroached portion of schedule 'A' property by putting up barbed wire fencing measuring to an extent of 20 x 20 ft. and using as ingress and egress to his property. The same was brought to the knowledge of plaintiff only on 14.12.2014 when he visited the spot. Hence, proposed amendment of the plant as well as prayer is necessary, which is only subsequent event. If the amendment is not allowed, the plaintiff would be put to

great hardship and on the other hand the defendant will not be put to any hardship. Hence, prays to allow IA.

3. On the other hand the defendant has filed objections to the IA contending that the application is not maintainable either in law or on facts. The amendment sought by the plaintiff will change the nature and characteristics and cause of action. The plaintiff has filed the present IA after filing written statement to fill up the gaps and lacunas with an intention to drag on proceedings. The plaintiff has no right to seek the relief of mandatory injunction in the suit for bare injunction. The plaintiff trying to achieve the relief of recovery of possession without any lawful ownership without paying proper court fee. The plaintiff has not approached the court with clean hands. In the absence of his legal lawful rights and legal lawful possession over the suit schedule property the suit itself is not maintainable for bare injunction. It is evidenced the principles of law in a bare injunction suits, no property can be inducted or included, other than the property mentioned originally at the time of filing of this suit. When the suit for

bare injunction is pending, the very same plaintiff cannot file a suit for recovery of possession or mandatory injunction. If the IA is allowed the defendant will be put to greater hardship and on the other hand if the IA is dismissed no hardship will be caused to the plaintiff.

4. I have heard arguments of both the sides on IA.

5. The Points that would arise for consideration before this court, are as follows:

**(1) Whether IA filed by the plaintiff Order VI Rule 17 R/w Sec.151 of CPC, is fit to be allowed?**

**(2) What order?**

6. My findings on the above Points are as under:

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

**Point No.2:** As per the final orders,  
for the following:

**REASONS**

7. **Point No.1:-** The learned counsel for the plaintiff has argued as per the contentions taken in the affidavit annexed to IA and prays to allow the same. On

the other hand, the learned counsel for the defendant has argued as per the contentions taken in the objections to IA.

8. I have carefully gone through the records. The plaintiff has filed this suit against the defendant seeking the relief of permanent injunction. Now, the plaintiff by filing the present IA under order VI Rule 17 of CPC prays to permit him to amend the plaint as per the proposed amendment on the ground that after filing the suit the court was pleased to grant injunction orders. In spite of it the defendant opened the door on the Eastern side of his property, which is referred in schedule 'C' and encroached a portion of the property in schedule 'A' measuring 20 x 20 ft. on the western portion of the suit schedule 'A' property and put up a barbed wire fencing. Therefore, it is necessitated for the plaintiff to amend the plaint for the relief of mandatory injunction.

9. Though the defendant in his objections statement has denied the allegations made by the plaintiff, but, in view of specific contention taken by the plaintiff that subsequent to filing of the suit, the defendant encroached a

portion of suit schedule 'A' property measuring to an extent of 20 x 20 Ft., and put up barbed wire fencing, under such circumstances, the proposed amendment is just and necessary to resolve the dispute between the parties. If the proposed amendment is allowed, it will not change any cause of action and no prejudice would be caused to the defendant since he has got every right to file additional written statement by taking his own defence. On the other hand if the proposed amendment is not allowed, great hardship and injustice would be caused to the plaintiff. On going through the affidavit annexed to the IA, satisfied with the reasons stated therein. Hence, in the interest of justice, I am of the considered view that the IA is fit to be allowed. Hence, I answer the above Point No.1 in the **affirmative**.

10. **POINT NO.2:-** In view of the aforesaid reasons on Point No.1, I proceed to pass the following:

### **ORDER**

The IA filed by the plaintiff under Order VI Rule 17 R/w. Sec. 151 of CPC is hereby allowed.

The plaintiff is permitted to amend the plaint as per the proposed amendment.

For amendment call on 7.10.2017.

(Dictated to the Judgment Writer, transcript thereof is corrected and then pronounced by me in the open Court on this the 8<sup>th</sup> day of September, 2017).

(B.NARAYANAPPA)  
XIII ADDL.CITY CIVIL AND SESSIONS JUDGE,  
MAYOHALL UNIT: BENGALURU



**8.9.2017**

P – Sri KSVB

D – Sri AS

For orders on IA U/o.VI R 17

Order pronounced in open court:  
vide separate detailed order

The IA filed by the plaintiff under  
Order VI Rule 17 R/w. Sec. 151 of CPC is  
hereby allowed.

The plaintiff is permitted to amend  
the plaint as per the proposed amendment.

For amendment call on 7.10.2017.

XIII Addl.City Civil and Sessions  
Judge, Mayohall Unit, Bengaluru