

**IN THE COURT OF THE I ADDL. CIVIL JUDGE JMFC.,  
AT CHANNAGIRI**

**Dated this the 13<sup>th</sup> day of September, 2021**

**PRESENT: Smt. KANNIKA M.S. M.A., LL.B.,  
C/c I Addl Civil Judge & JMFC.,  
Channagiri  
O.S. No.71/2013**

**PLAINTIFF** : A.G.Rudrappa

**DEFENDANTS** : A.G.Gangadarappa and others.

**PARTIES IN I.A.**

**APPLICANT** : A.G.Siddesh ..... Defendant No.1(b)

**/Vs/**

**OPPONENT** : A.G. Rudrappa .... Plaintiff

**ORDERS ON I.A. U/O.VI RULE 17 R/W.Sec.151 CPC**

This is an application filed by the defendant No.4 under Order VI Rule 17 R/W.Sec.151 of C.P.C. praying to amend the written statement as under:-

**Proposed Amendment**

“After the para 8 add: Para 8(a) “ Subsequent to the filing of this suit the defendants got measured their land in Sy.No.40/1A1 of Alur Village by the survey department through hudbast survey on 22/0/2021

with notice to the plaintiff and in that survey it was found out that the plaintiff of this suit being the western boundary owner to Sy.No.41/1A1 encroached an extent of  $\frac{1}{2}$  gunta in the western part of Sy.No.40/1A1 and the defendants will initiate legal action to get the possession of this encroached portion. As such the claim made by plaintiff that the defendant encroached the eastern part of his property is absolutely false”

**2.** In support of application, applicant/ defendant No.1(b) sworn to an affidavit that in their written statement they have specifically denied the alleged encroachment and submitted that they have not encroached any portion of the land of plaintiff. Now the evidence of the plaintiff is completed where in several admissions are there in the evidence of plaintiff, falsely the claim. As the plaintiff had repeatedly contended that they have encroached his property in the eastern portion, and as such he filed an application to survey department to carry out the hudson survey to their property, it was situated to the east of property of the plaintiff. The said survey was conducted on 22-02-2021 with due notice to the plaintiff by the survey department, in that survey it was found out that the plaintiff himself encroached the  $\frac{1}{2}$  guntas in the western part of his property. As such this fact of encroachment is to be pleaded in their written statement as the said fact is a material one which will go to the root of this suit claim and this fact is a subsequent event that took place which relates to suit claim and to their defence. The said fact is to be added in their written statement which is relevant to decide the facts involved in this case. The proposed

amendment will not change nature of the defence. Hence prays to allow the application.

**3.** The learned counsel for plaintiff filed objections to the I.A. Contending that the application is not maintainable, the grounds made out in the affidavit are all created and concocted false and base less grounds. In fact the plaintiff has deposited the amount for hudbast of his land in in Sy. No.39/3 measuring 1 acre 21½ gunta situated at Alur Village as per his application for survey the land date was fixed on 15-07-2015 and on that day surveyor came to the spot and caused commissioner work and taken time on 25-7-2015 and signed the said document. Subsequent the defendant issue notice to the Tahasildar survey supervisor on stating that their was a suit pending before this court and it was earlier report of surveyor is already filed before the court inspite of it now the defendant clouded with the surveyor on 22-02-2021with out the knowledge of the plaintiff created the document and stated that half gunta of his land was encouraged by this plaintiff. There fore the present application is filed which is created by the defendant and it is introduces the new set of fact. the on 17-07-201If this application is allowed he will be put to great hardship and injustice. With these reasons, prays to dismiss the application with costs.

**4.** Heard Learned counsel for defendant and plaintiff. I have perused the pleadings and materials placed on record.

5. The following points that arise for my consideration.

1. Whether the applicant / defendant No.4  
made out grounds to permit him to amend the  
written statement as prayed in I.A.?

2. What Order?

6. My answer to the above points are as under:-

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

**Point No.2:- As per final order  
For the following:**

### **REASONS**

**7. POINT NO.1 :-** This is a suit for the relief of declaration and recovery of possession, The Defendants appeared through their counsel and filed written statement. In this case, the matter set down for defendant side evidence. At this stage, this application being filed for amend the written statement. On careful perusal of the I.A. filed by the defendant No.1(b), it is clearly reveals that the during the pendency of the suit they measured their land, as per the survey he know that the plaintiff has encroached the  $\frac{1}{2}$  guntas in western part his land. Therefore the plaintiff has falsely instigated this suit.

**8.** The contention of the applicant / defendant is that during the pendecey of the suit they measured their land, as per the survey he know that the plaintiff has encroached the  $\frac{1}{2}$  guntas in western part his land and also the plaintiff has given admissions in his cross-

examination. The plaintiff contention is that this defendant have encroached his land. But as per this Survey clears that the plaintiff has encroached the land. On the other hand plaintiff contention is that he had filed this suit in the year 2013, as per the orders of this court surveyor was appointed as commissioner and he has filed the report before this court on 12.12.2018. now he colluded with surveyor created false document and stated this plaintiff has encroached his land.

9. Perusal of the affidavit and objections, the plaintiff has filed this suit in the year 2013, the court commissioner has already filed his report before this court, that report is kept in obedience, till conclusion of the trial, at this stage there is encroachment made by the plaintiff or the defendant is not considerable and also these defendant has not filed any counter claim against the plaintiff's claim. However the addition pleadings in the written statement at this stage not permitted. If there is a false claim by the plaintiff it will be decided in final adjudication of the case and also the defendant has not furnished any document in support of the proposed amendment. If the defendant is permitted to amend the written statement as prayed in I.A., inconvenience will cause to the other side. If the application is allowed, it will change the nature of the defence. Taking into consideration of these facts. Taking into consideration of the facts and circumstances as well as above principle of law, it is not just and proper to permit the defendant to amend the written statement. Accordingly, this point is answered in the Negative.

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

**ORDER**

**I.A. filed by the defendant under  
Order VI Rule 17 R/W.Sec.151 of C.P.C. is  
hereby dismissed.**

**No orders on cost.**

*(Typed by me on laptop, printout taken by the stenographer, corrected, signed and then pronounced by me in the open court on  
**13-09-2021**).*

**(KANNIKA M.S.)  
C/c IAddl. Civil Judge and J.M.F.C,  
Channagiri.**