

KABG040004122016



**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE & JMFC,
AT : BELAGAVI.**

PRESENT : Smt. Preeti L. Malavalli, B.B.A.,LL.B (Hons.)
Prl. Civil Judge & JMFC.,
Belagavi.

DATED THIS THE 25TH DAY OF JULY-2025

ORIGINAL SUIT NO.158/2016

PLAINTIFF :

1)	Shri. Babasaheb @ Balasaheb S/o. Kedari Pawar, Age : 74 years, Occ : Business, R/o : H.No.244/112, 2 nd Cross, Fulbag Galli, Belagavi.
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Vs.

DEFENDANTS :

1)	Shri. Jotiba S/o. Subahanrao Pawar, Age : 58 years, Occ : Business, R/o : Varchi Galli, At/Post : Kudnur Village, Tal : Chandagad, Dist : Kolhapur, State : Maharashtra, Pin Code : 416508, and others.
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PARTIES TO I.A.NO.XV**Applicants/Defendants :**

1)	Shri. Jotiba S/o. Subahanrao Pawar & others.
	(By Shri. R. P. Mandolkar, Adv.)

Vs.**Opponent/Plaintiff :**

1)	Shri. Babasaheb S/o. Kedari Pawar.
	(By Shri. Y. G. Gumaj, Adv.)

1.	Provision under which application is filed	U/O.VI Rule 17 R/w. Sec. 151 of C.P.C.
2.	Relief sought for	Amendment of written statement
3.	The date on which the application is filed	19.08.2024
4.	Number of application	XV
5.	The date on which the objections are filed by different opponent	05.11.2024
6.	The date on which the orders were passed on the said application.	25.07.2025

**ORDERS ON I.A.NO.XV FILED BY DEFENDANTS
UNDER ORDER VI RULE 17 R/W. SEC.151 OF
CODE OF CIVIL PROCEDURE**

This application is filed U/O.VI Rule 17 R/w. Sec.151 of C.P.C. by the defendants seeking amendment of written statement as stated in the application. The defendants have sought to amend the written statement as follows :

‘1) *In Paragraph No.8 of the written statement at Line 2 and 3, to delete the word ‘12.06.1999’ and to be insert word ‘27.05.1999’ in its place.*

2) *After Para No.6 of the written statement, to add the following paragraph as Para No.6A.*

‘That the defendant most respectfully submit that the present suit property bearing CTS No.4880/25 and 4880/26 are the originally traced in the family of Khatib as original holder as per the record of the rights thereafter, the said Narayan Angappa Madli name entered as the lessee, he thereafter transferred the said property to the predecessors of the defendants. Thus the name of the plaintiff and defendant father were entered as the lessees in the suit property. The said property coming under the purview of permanent lease therefore, the schedule property is under sanctions and restriction to transfer and also to obtain

requisite permission from State Government for any kind of mode transaction on sale and other transfer.'

2. In the affidavit annexed to the application, the defendant No.1 has stated that the plaintiff has filed suit against him and other defendants seeking the relief of specific performance of contract and that now the defendant has sought the proposed amendment to the written statement. He has further stated that the proposed amendment was not within his knowledge at the time of drafting written statement and subsequently he came to know about the said facts. That the flow of title with respect to suit schedule property has to be explained and the proposed amendment is necessary and material in order to adjudicate the matter in dispute. He has further stated that he came to know about the date of death of his father as 27.05.1999 and by mistake wrong date has been mentioned in the written statement. That he is permanent resident of Maharashtra and due to the compelling situation of health issues and age factor, the defendants were not able to file the present application earlier. That if the proposed amendment is allowed, then there is no loss or hardship to the plaintiff, but on the contrary if the same is rejected, then the defendants will suffer irreparable loss which cannot be compensated in terms of money. On these grounds, the defendants have prayed to allow the application.

3. Per contra, the plaintiff has filed objection to the said application on the ground that the present application is not tenable as the proposed amendment does not depict the actual fact. The ground urged by the defendants that they did not have knowledge of the proposed amendment at the time of drafting written statement, is not ground Under Order VI Rule 17 of C.P.C. to file the application. The proposed amendment would introduce a totally new case and it will change the nature of suit. The defendants have filed the present application after closure of evidence of plaintiff and when the matter was posted for defendant evidence. Hence, the present application is not maintainable and it is filed only to cause delay in the proceedings. On these grounds, the plaintiff prayed to dismiss the present application with costs.

4. On the basis of said application and objection, the following points arise for my consideration :

1) Whether the applicants/defendants have made out grounds to allow the application?

2) What order?

5. My answer to above points are as under :

Point No.1 : In the Affirmative.

Point No.2 : As per final order for the following:

REASONS

6. **Point No.1 :** This suit is filed by plaintiff seeking the relief of specific performance of contract against the defendants. Now the defendants have sought proposed amendment to the written statement to bring few facts to the notice of this Court as narrated in the application. Per contra, the plaintiff has filed objection to the said application.

7. Under Order VI Rule 17 of C.P.C., Court's discretion to grant permission for a party to amend his pleading can be exercised, firstly, where no injustice is done to other side and secondly, the amendment being necessary for the purpose of determining the real question in controversy between the parties also keeping in view the proviso under Rule 17 of Order VI of C.P.C. Even after commencement of the trial, the amendment can be permitted, if it is shown that in spite of due diligence, the applicant could not have raised the matter, earlier to the stage of commencement of the trial.

8. In the present suit, the plaintiff has sought the relief of specific performance of contract. When the case stood posted for defendant evidence, the defendants have filed the present application seeking the proposed amendment to the written statement. If the proposed amendment is perused, it reveals that the defendants are intending to explain few facts regarding the

flow of title to the suit property since the defendants are intending to insert one paragraph to the effect that there was transfer of suit property to the predecessors of defendants and thereafter the plaintiff and defendants fathers' name came to be entered as lessees to the said property and as such the property comes under the purview of permanent lease. Further the defendants are intending to correct the date of death of their father as mentioned in Paragraph No.8 of their written statement i.e., they are intending to delete the date 12.06.1999 and to add the date 27.05.1999. It is for the defendants to prove their contention by producing cogent evidence. Moreover, the proposed amendment is not in the nature of withdrawal of any admission given in the written statement earlier and it is only in the form of explanation of facts already pleaded. As such, the contention of plaintiff that the proposed amendment is sought at belated stage, can be met by imposing cost on the defendants. But, if the proposed amendment is not allowed, then the defendants would suffer loss which cannot be compensated in terms of money. The merits of amendment cannot be ascertained or discussed at this stage. The Hon'ble Apex Court in **Rajesh Kumar Aggarwal and others Vs. K. K. Modi and others reported in (2006) 4 SCC 385**, has held that *the Courts should allow all the amendments that may be necessary for determining the real question in controversy between the parties and at the stage of considering the*

*applications for amendment, the Court should not go into correctness or falsity of the case in the amendment, nor record a finding on the merits of amendment at the stage of considering the prayer for amendment. It is also well settled that the amendments sought to the pleadings are to be considered liberally. In this regard, the learned counsel for defendants has relied on the decision of the Hon'ble Apex Court in **Pradeep Singhvi and another Vs. Heero Dhankani and others**, reported in (2004) 13 SCC 432, wherein it is held that *the Court has discretion to permit such amendment as would be necessary for purpose of determining real questions in controversy between the parties at any stage of the proceedings when the proposed amendment neither drastically alters the nature of defence nor is in the nature of withdrawal of admission made earlier by the defendants, at most the plaintiffs would have to be re-examined.* The learned counsel for defendants has also relied on the decision of Hon'ble Apex Court in **Mahila Ramkali Devi & Others Vs. Nandram (D) Thr. Lrs. & others**, reported in AIR 2015 SC 2270, wherein it is held that *the Courts would always give relief to amend the pleadings of the party unless it is satisfied that the party applying was acting malafide or that by his blunder he had caused injury to his opponent which cannot be compensated for by an order of cost.* The aforesaid decisions are aptly applicable*

to the case on hand and the defendants have made out sufficient ground to allow the present application.

9. The learned counsel for plaintiff has also relied on the decision of the Hon'ble High Court of Karnataka in **Sadana Vs. Mahabaleshwar and Others**, reported in **2020 (4) KCCR 2738**, wherein it is held that *when the matter is posted for defendant evidence and the application for amendment is filed after lapse of several years then the proviso to Order VI Rule 17 of C.P.C. has to be applied and it has to be seen whether inspite of due diligence, the party could not have raised the matter before commencement of trial*. No doubt, it is well settled principle of law that after commencement of trial the party seeking amendment to pleading has to establish that he could not have raised the matter before commencement of trial. But however, the defendants have stated in their application that due to compelling situation of health issues and due to age factor, they could not file application in time. As such, the present application needs to be considered liberally and it deserves to be allowed. Hence, I answer **Point No.1 in the Affirmative**.

10. Point No.2 : For the above said discussion on Point No.1, I proceed to pass the following :

ORDER

The application i.e., I.A.No.XV filed by applicants/defendants U/O.VI Rule 17 R/w. Sec.151 of C.P.C. is hereby allowed on costs of Rs.2,000/-.

The defendants are hereby directed to carry out amendment and to file amended written statement.

(Dictated to the stenographer directly on computer, revised by me & after corrections pronounced in the open Court on this the 25th day of July-2025.)

**(Smt. Preeti L. Malavalli)
Prl. Civil Judge & JMFC,
Belagavi.**