

KABG300010402022



**IN THE COURT OF SENIOR CIVIL JUDGE,
BAILHONGAL, AT: BAILHONGAL**

PRESENT:

**Shri. Ravi Babu Chawan,
B.A.LL.B(Spl.).
Senior Civil Judge, Bailhongal.**

O.S. No. 243/2022

Dated this the 4th Day of July, 2025

1) Smt. Narasubai W/o Bhavanisingh @ Babusingh
Bulake and another

.....Plaintiffs

(By Sri S.R.H., Advocate)

-Vs.-

1) Shri. Ganapatisingh Kesarsingh Bulak
and others.

.....Defendants

(By Sri. A.F.P., Adv. D1 to D7)

Parties to IA No.VIII

1) Smt. Uma Kesarsingh Bulake
and another.

.....Applicant/Defendant No.6

(By Sri. A.F.P., Advocate)

-Vs.-

1) Smt. Narasubai W/o Bhavanisingh @ Babusingh
Bulake and another,

.....Opponents/Plaintiffs

(By Sri. S.R.H., Advocate)

ORDER ON IA NO. VIII

This is an application filed under Order VI Rule 17 read with Section 151 of C.P.C. by defendants seeking permission to amend their written statement.

2. By virtue of amendment defendant No.6 intends to contained that the plaintiff No.1 on her behalf and behalf of the plaintiff No.2 through their counsel namely Shri S.D. Allapanavar participated in the R.T.S. S.R. No.34 and 35/2001-2002 proceedings and further she wants contained regarding relinquishment rights of defendant No.1 to 3 and so also regarding her independent earning.

3. The learned counsel for plaintiffs has filed his objections to the IA contending that the amendment at the stage of defendants' side evidence is not permissible. There is delay in filing IA and earlier suits

defendants clearly admitted that suit properties are ancestral properties and these. The contention regarding RTS proceeding referred to in the proposed amendment already taken in page No.2 of written statement. Hence prayed to dismiss IA with cost.

4. The learned counsel for defendants as well the counsel for plaintiffs filed their separate written arguments. I have perused the written arguments filed on behalf of both the sides.

5. The following point arises for my consideration:

POINTS

1) Whether the I.A. No. VIII filed U/o. VI Rule 17 R/w. Sec. 151 of C.P.C. deserves to be allowed ?

2) What order

6. My findings on the aforesaid points is as under;

Point No.1: In the affirmative

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

REASONS

7. **Point No.1:-** This is suit for partition and separate possession. Amendment sought for para-3a is the flow of the property, self earning and regarding participation of plaintiff No.1 R.T.S. S.R. No.34 and 35/2001-2002 proceedings. Admittedly evidence of the plaintiffs' side is closed and now the matter at stage of evidence on defendants' side. Under order 6 rule 17 of CPC, amendment to pleading must be liberally considered prior to commencement of trial. No doubt by way of amendment the defendants is introducing new fact, but the contentions raised at present by the defendants is required to be proved by them.

8. Proposed amendment sought to be insert is as under:

"ಪ್ರತಿವಾದ ಪತ್ರದ ಪ್ಯಾರಾ ನಂಬರ 3 ರ ಪುಟ ಸಂಖ್ಯೆ 2 ಕೆಳಗಡೆಯಿಂದ 8 ನೇ ಸಾಲಿನಲ್ಲಿ "ದಿನಾಂಕ:20/11/2001 ರಂದು ನೋಂದಾಯಿತ ಅಂಚೆಯ ಮೂಲಕ ಗ್ರಾಮ ಲೆಕ್ಕಾಧಿಕಾರಿಗಳಿಗೆ ವಾದಿ ನಂ.1 ಲಿಖಿತ ತಕರಾರನ್ನು ಸಲ್ಲಿಸಿದ್ದು ಇರುತ್ತದೆ. ಅದರ ಮೇಲಿಂದ ಹಕ್ಕು ದಾಖಲೆ ನಂಬರ 6559 & 3002 ಇವುಗಳಿಗೆ ತಕರಾರು ಪ್ರಕರಣವಾಗಿ ನೇಸರಗಿ ಆರ್.ಟಿ.ಎಸ್.ಎಸ್.ಆರ್.ನಂ:34 & 35/2001-2002 ಮಾನ್ಯ-ಉಪತಹಶೀಲ್ದಾರ ನೇಸರಗಿ ಇವರ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ವಾದಿ ನಂ.1 ಇವಳು ವಾದಿ ನಂ.2 ರ ಪರವಾಗಿ ಶ್ರೀ ಎಸ್.ಡಿ.ಅಲ್ಲಪ್ಪನವರ ವಕೀಲರು ಇವರ ಮುಖಾಂತರ ದಿನಾಂಕ:07/12/2001 ರಂದು ಹಾಜರಾಗಿದ್ದು ಇರುತ್ತದೆ. ಮತ್ತು ಇವರ ಪರವಾಗಿ ಲಿಖಿತವಾದವನ್ನು ಸಲ್ಲಿಸಿದ್ದು ಇರುತ್ತದೆ. ಮತ್ತು ಸದರಿ ಪ್ರಕರಣವನ್ನು ನಡೆಸಿದ್ದು ಇರುತ್ತದೆ. ಸದರಿ

ಪ್ರಕರಣದಲ್ಲಿ ವಾದಿಯರ ಹಾಗೂ ವಾದಿಯರ ಪರ ವಕೀಲರ ವಿಚಾರಣೆಗೆ ಒಳಪಟ್ಟು ಸದರಿ ಆರ್.ಟಿ.ಎಸ್.ಎಸ್.ಆರ್.ನಂ.34 & 35/2001 ನ್ನು ಪುರಸ್ಕರಿಸಿದ್ದು ಇರುತ್ತದೆ. ಅದರ ಮೇಲೆ ವಾದಿಯರು ಎಸ್.ಡಿ.ಅಲ್ಲಪ್ಪನವರ ವಕೀಲರ ಮುಖಾಂತರ"

ಪ್ರತಿವಾದ ಪತ್ರದ ಪುಟ ನಂ.3 ರ 2 ನೇ ಸಾಲಿನಲ್ಲಿ ದಿನಾಂಕ:21/06/2006 ರಂದು ನೋಂದಾಯಿತ.

3 ಅ) ದಿನಾಂಕ:22/01/1997 ರಲ್ಲಿ ಲಕ್ಷ್ಮೀಬಾಯಿ ಕೋಂ ಪ್ರತಾಪಸಿಂಗ ಬುಲಾಕೆ ಇವರು ತಮ್ಮ ಸ್ವಯಾರ್ಜಿತ ಆಸ್ತಿಯಾದ ಸಂಪಗಾಂವ ಗ್ರಾಮದ ರಿ.ಸ.ನಂ.5, ಕ್ಷೇತ್ರ 9 ಎಕರೆ 37 ಗುಂಟೆ ಖರಾಬ 2 ಗುಂಟೆ ನಿವ್ವಳ 9 ಎಕರೆ 35 ಗುಂಟೆ ಮತ್ತು ಭಾವಿಹಾಳ ಗ್ರಾಮದ ರಿ.ಸ.ನಂ.40/ಅ, ಕ್ಷೇತ್ರ 18 ಎಕರೆ 5 ಗುಂಟೆ ಖರಾಬ 18 ಗುಂಟೆ ನಿವ್ವಳ 17 ಎಕರೆ 27 ಗುಂಟೆ ಆಕಾರ 29.88 ಪೈಸೆ, ರಿ.ಸ.ನಂ.41, ಕ್ಷೇತ್ರ 4 ಎಕರೆ 35 ಗುಂಟೆ ಖರಾಬ 31 ಗುಂಟೆ ನಿವ್ವಳ 4 ಎಕರೆ ಗುಂಟೆ ಇವುಗಳನ್ನು ಪ್ರತಿವಾದಿ ನಂ.1 ರಿಂದ 3 ಇವರಿಗೆ ಹಕ್ಕು ಬಿಟ್ಟ ಪತ್ರದ ಮೂಲಕ ಆಸ್ತಿಗಳನ್ನು ಬಿಟ್ಟುಕೊಟ್ಟಿದ್ದು ಇದ್ದು, ಸದರಿ ಆಸ್ತಿಗಳಿಗೆ ಹಕ್ಕು ಬಿಟ್ಟ ಪತ್ರದ ಮೂಲಕ ಸಂಪೂರ್ಣ ಮಾಲೀಕರು ಹಾಗೂ ಕಚ್ಚಾ ವಹಿವಾಟದಾರರು ಆಗಿದ್ದು ಇರುತ್ತದೆ. ಮತ್ತು ದಿನಾಂಕ:07/12/2006 ರಂದು ಪ್ರತಿವಾದಿ ನಂ.1 ರಿಂದ 3 ಇವರು ದಾವಾ ಆಸ್ತಿಗಳನ್ನು ತಮ್ಮ ತಮ್ಮಲ್ಲಿ ಅಪಸಾತ್ ವಾಟ್ಸಿ ಮಾಡಿಕೊಂಡಿದ್ದು ಅದರ ಪ್ರಕಾರ ಸಂಪೂರ್ಣ ಮಾಲೀಕರಾಗಿ ಹಿಸ್ಸಾಗಳಿಗೆ ಪ್ರತ್ಯೇಕ ಕುಜಾ ವಹಿವಾಟದಲ್ಲಿ ಇರುತ್ತಾರೆ. ದಿನಾಂಕ:07/12/2006 ರಿಂದ ಇಲ್ಲಿಯವರೆಗೆ ತಮ್ಮ ತಮ್ಮ ಪಾಲಿಗೆ ಬಂದ ಜಮೀನುಗಳನ್ನು ಮಾಲ್ಕಿನಾತೆಯಿಂದ ಪ್ರತ್ಯೇಕ ಕಬ್ಬಾ ವಹಿವಾಟದಲ್ಲಿ ಇಟ್ಟುಕೊಂಡು ಬೆಳೆಗಳನ್ನು ಬೆಳೆಯುತ್ತ ಬಂದಿದ್ದು ಇರುತ್ತದೆ. ಈ ಸಂಗತಿಯು ವಾದಿಯರಿಗೆ ಚೆನ್ನಾಗಿ ಗೊತ್ತಿದ್ದು ಇರುತ್ತದೆ.

ಪ್ಯಾರಾ 6 ಪುಟ 4 ರ 3 ನೇ ಸಾಲಿನಲ್ಲಿ ಪ್ರತಿವಾದಿ ನಂ.6 ಇವರು ಸಂಪಗಾಂವ ಗ್ರಾಮ ಪಂಚಾಯತಿಯ ಚುನಾವಣೆಯಲ್ಲಿ ಸದಸ್ಯಳು ಅಂತಾ ಆಯ್ಕೆಯಾಗಿದ್ದು ದಿನಾಂಕ:30/03/2000 ರಂದು ಗ್ರಾಮ ಪಂಚಾಯತಿಯ ಅಧ್ಯಕ್ಷಳಾಗಿ ಆಯ್ಕೆಯಾಗಿದ್ದು ಇರುತ್ತದೆ. 5 ವರ್ಷಗಳವರೆಗೆ ಅಧಿಕಾರದಲ್ಲಿ ಇದ್ದುದು ಇರುತ್ತದೆ. ಮತ್ತು ಖಾಸಗಿಯಾಗಿ

ಹಾಲಿನ ಡೈರಿ ನಡೆಸುತ್ತಿದ್ದಳು. ಮತ್ತು 5-6 ಸ್ಟೀ ಶಕ್ತಿ ಸಂಘಗಳಲ್ಲಿ ಅಧ್ಯಕ್ಷ ಉಪಾಧ್ಯಕ್ಷಳಾಗಿ ಕಾರ್ಯನಿರ್ವಹಿಸುತ್ತಿದ್ದಳು. ಪ್ರತಿವಾದಿ ನಂ.6 ಇವರಿಗೆ ಮೇಲ್ಕಾಣಿಸಿದ ಕಾರ್ಯಗಳಿಂದ ಆದಾಯ ಇತ್ತು.”

9. The learned counsel for plaintiffs has placed reliance a decision of the **Hon’ble Apex Court reported in KCCR 2024 (1) SC 869** in the case of **Basavaraj V/s Indira and others**, wherein it is held that:

“A. Civil Procedure Code 1908-Order 6, Rule 17 proviso-Application to amend plaint-Related stage-The Court held that the action of High Court is not proper and correct.

Civil Procedure code, 1908-proviso to Order 6, Rule 17- No application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial-When it is not even the pleaded cause in the application for amendment that due diligence was there at the time of filing of the suit in not seeking relief prayed for by way of amendment - All what was pleaded was oversight - The same cannot be accepted as a ground to allow any amendment in the pleadings at the far end of the trial especially when admittedly the facts were in knowledge of the plaintiffs. “

10. On the other hand, the learned counsel for defendants has relied upon the order in **Writ Petition No.105690 of 2023 (GM-CPC) dated 09-10-2023** by the **Hon’ble High Court Karnataka Dharwad Bench** in the case of **Bibi Zubaida Gangavally and others**

V/s Miran Moheddin Peerzada @ Mohammed Peerzada and others, wherein it is observed that:

"It is a trite law that amendment of pleadings prior to settlement of issues are to be liberally construed and allowed. If amendment of plaint is to be liberally allowed, then the amendment of written statement by defendant also liberally needs to be considered. It is equally a trial law that a yardstick and principle governing amendment of paint NC:2023" KHC-D:11993 cannot be applied to the pleadings in the written statement. Be that as it may. In the proposed amendment, I do not find any material admissions being withdrawn under the grab of amendment of written statement. The proposed amendment is too explanatory in nature. Even otherwise, the defendant has a liberty to raise inconsistent pleas in the written statement. Therefore, I am of the view that no serious prejudice would be caused to the plaintiff if proposed amendment is allowed. The plaintiff can file a rejoinder to the proposed amendment. Therefore, the finding of the court below that the proposed amendment changes the nature of written statement is patently erroneous".

Further he relied upon the order in Writ petition No.13509 of 2020 (GM-CPC) dated 09-10-2023 by the Hon'ble High Court Karnataka at Bengaluru in the case of **Shri. Appanna S/o Late Krishnappa and other V/s Shri. Sriival G Patil**, where in it is observed that:

"It is not in dispute that the respondent has filed two suits against the petitioners that the petitioners appeared and filed the written statement. Thereafter, the respondent filed the application for amendment of the written statement in both the suits. The Trial court rejected the application in OS No.799/2017, but allowed the similar application for amendment of written statement in OS No.798/2017. The same court has passed two orders, one allowing

the application for amendment of the written statement and in another rejecting the application for amendment of the written statement. The petitioners are also entitled for the same benefit as passed in OS No.798/2017”.

11. In the light of orders of the Hon'ble High Court of Karnataka in the above extract writ petitions, it is to be noted here that the proposed amendment is sought by the defendants. The yardstick for considering amendment of written statement vis-à-vis plaint is totally different. In case of amendment to written statement, liberal approach needs to be adopted as it will not change the nature of suit. The defendants are entitled to take up any amount of defence. In view of the settled law, as well as facts and circumstances of the case if the amendment sought by the defendants is allowed, no hardship will be caused to the defendants and it is helpful to the court also to decide the partition suit by considering entire merits. The inconvenience if any caused to the plaintiffs may be compensated by imposition of cost. Therefore, I answer the point No.1 in the affirmative

12. **Point No.2:-** For the findings given to point no.1, this Court deems fit to pass the following;

ORDER

IA No.VIII filed under Order 6 rule-17 read with Section 151 of C.P.C. is hereby allowed on cost of Rs.500/-.

The defendants are permitted to amend the written statement subject to payment of cost to the plaintiffs.

Call on for amendment and amended written statement.

(Dictated to the stenographer directly on computer system, transcribed and typed by him, corrected, revised then signed by me and pronounced in the open Court on this the 4th day of July, 2025)

(Ravi Babu Chawan)
Senior Civil Judge, Bailhongal.

