

IN THE COURT OF THE I ADDL. CIVIL JUDGE & JMFC,
CHIKODI, AT: CHIKODI.

Present : Sri. Nagesh Patil,
B.Com.,LL.B.
I Addl. Civil Judge & JMFC,
Chikodi.

Dated this the 11th October 2023

O. S. No.111 of 2017

Plaintiff:

1. Sri. Rama Jayaram Rayannavar,
Age: 47 years, Occ: Agriculture,
R/o: Bhim Nagar, Chikodi,
Tq: Chikodi. Dist: Belagavi.

(By Sri. P. S. J, Advocate)

-VS-

Defendants:

1. Sri. Shamarao Jayaram Rayannavar,
Age: 47 years, Occ: Agriculture,
R/o. Bhim Nagar, Chikodi,
Tq: Chikodi, Dist: belagavi and others.

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

Parties To I.A.No.VIII

Applicants/Ori. Defendants:

1. Sri. Shamarao Jayaram Rayannavar,
R/o. Chikodi.

-VS-

Opponent/Ori. Plaintiff:

1. Rama Jayaram Rayannavar,
R/o: Bhim Nagar, Chikodi & others

i	Provision under which the application filed	U/o. VI Rule 17 R/W 151 of CPC
ii	Relief sought for	Amendment of written statement
iii	The date on which the application is filed	20-09-2023
iv	Number of the application	I.A.No.8
v	The date on which the objections are filed by different opponents	26-09-2023
vi	The date on which the orders were passed on the said application	11-10-2023

ORDERS ON I.A.NO.8 FILED
UNDER ORDER VI RULE 17 R/W SEC. 151 OF CPC

The defendant No.1 has filed application Under order VI Rule 17 R/W Sec. 151 of CPC for amendment of written statement as under;

- 1) In para No.11 of the written statement, 5th line the word '**Eastern**' may be deleted and in its place '**Western**' may be added and in the 7th line the word '**Western**' may be deleted and the word '**Eastern**' be added and in the 10th line the word '**Western**' is deleted and the word '**Eastern**' be

added and in the 11th line the word '**Western**' be deleted and in the place '**Eastern**' may be added.

2) In the hand sketch map the word 'East' is to be deleted and in its place '**West**' is to be added and in the map the 'West' is to be deleted and in that place '**East**' is to be added and in place of '**North**' be deleted and '**South**' be added and in place '**South**' '**North**' is to be inserted by deleting '**South**'.

2. In support of the application the applicant/defendant No.1 has sworn to an affidavit wherein stated that, he has hurriedly given information regarding the situation of the property, but through oversight and by mistake committed in typing the written statement the situation of the property is wrongly shown in the hand sketch map produced along with the written statement. So also in para No.11 of his written statement the house of the plaintiff is situated towards the 'western' side of their property but while typing mistake in the written statement it is wrongly mentioned as 'Eastern' side. Due to that mistake the entire situation of the property has been changed in his written statement and also in the map produced by him along with written statement. In the map also situation is wrongly shown through oversight and

by mistake and the said mistake is to be corrected by necessary amendment in the written statement. There is no deliberate or intentional mistake committed by him while informing his counsel as there is no any confusion in the situation of the house the said mistake has been committed in the written statement. If application is allowed no loss or hardship will be caused to the other side. If same is not allowed he will be put to heavy loss. Accordingly, prays to allow the application.

3. The counsel for plaintiff has filed objection to the application. In the application it is contended that the application is devoid on merits and it is against to the provisions of law and facts of the case and it is filed at belated stage as such it is not maintainable. It is further contended that the defendant No.1 after knowing full the plaint pleadings has filed the written statement and has furnished the hand sketch map. Now he intends to change the situation of the property by seeking amendment which will introduce a new case all together and right accrued to the plaintiff will be taken away. Further the proposed amendment will change the nature of the written statement, situation of the properties and same is not permissible under law. The allegations of the defendant No.1 in para No.2 of

the affidavit cannot be believed and same are made to suit his ulterior purpose. Hence, prays to dismiss the application.

4. Heard the arguments from both sides.

5. On hearing both sides the points for Consideration of this court is as under:

POINTS

1. Whether the proposed amendment is just and necessary for determining the real questions in controversy between the parties?

2. What Order?

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

Point No: 1: Affirmative.

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

:: REASONS ::

7. **POINT NO.1:-** On perusal of the records, the present application is filed when the case is posted for cross examination of PW.1.

8. On perusal of the materials on record, the plaintiff has filed this suit for partition and separate possession against

the defendants contending that the suit property is ancestral joint family property there is no partition in the family and he is in joint possession of the suit property. It is standing in the name of plaintiff and defendants, but the defendant No.1 highhandedly put up permanent structure by demolishing the old structure by exclusion of the plaintiff's 1/5th share in the suit property. On the other hand the defendants contended that there was oral partition taken place in the month of February 1999 before Panchas of the locality in the said partition the Panchas have divided open space into 4 parts and plaintiff is given Eastern part measuring 15X45. Accordingly he has constructed independent RCC building and defendant No.1 is allotted Western side of the plaintiff share and he has constructed house in the year 1999. The oral partition was reduced into writing by the subsequent documents executed by defendant No.4 and husband of defendant No.7 and plaintiff infavour of the defendant No.1. So there is a description of joint status between the plaintiff and defendant in respect of house and open space long back. Accordingly, the defendants prayed to dismiss the suit.

9. Before considering the application it is just and proper to refer the "The provisions of order 6 rule 17 reads as follows:

“the court may at any stage of the proceedings allow either party to alter or amend his pleadings”.

“Further, provided that no application shall be allowed after the trial has commenced unless the court come to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of trial”. As such it is settled position of law that at any stage of the proceedings the court may allow the party to amend the pleadings. even though the trial has commenced if the party has showed sufficient cause that he could not have raised the matter before the commencement of trial the court may allow the amendment.

10. Considering the above said provision of Code of civil procedure and perusal of the pleadings. On perusal of the materials on record the plaintiff has filed suit for partition against the defendants, but the defendant No.1 has contended that there was already partition taken place in the year 1999 and as per partition eastern side property is allotted to the share of plaintiff and he constructed house

and defendant No.1 allotted to the Western side of plaintiff share. When the case is posted for cross of PW.1 the defendant No.1 has filed this application for amendment of written statement of para No.11 and also in hand sketch map produced along with written statement contending that in the 5th line of para No.11 of the written statement the word '**Eastern**' may be deleted and in its place '**Western**' may be added and in the 7th line the word '**Western**' may be deleted and the word '**Eastern**' be added and in the 10th line the word '**Western**' is deleted and the word '**Eastern**' be added and in the 11th line the word '**Western**' be deleted and in the place '**Eastern**' may be added. So also in the hand sketch map sought for amendment. Looking to the pleadings of both the parties, the defendant No.1 has specifically contended that there was oral partition took place in the month of February 1999 and therefore the entire burden is on the defendant No.1 to prove that there was oral partition taken place and in the oral partition the property was allotted to him and plaintiff. As such if the proposed amendment is allowed and defendant No.1 is permitted to include the said amendment it will not change the nature of the suit and cause of action and it will also not taken away the right accrued to the plaintiff. The specific case of the plaintiff is that there is no partition in the suit property. But

the defendant No.1 contends that there was already partition taken place. As such if the proposed amendment is allowed no in justice will be caused to the plaintiff. Further the plaintiff has got every right to file rejoinder to the amended written statement and he has also got right to cross examine the defendant No.1 on amended point.

11. This Court relied upon the decision reported in in (2006) 4 SCC between **Rajeshkumar Agarwal and K.K.Modi** and others the Hon'ble Apex Court observed as **"It is well settled principle that amendment of pleadings having regard to order 6 Rule 17 of CPC is permissible at any stage of the suit and that includes appellate stage, if said amendment is quit necessary for proper adjudication of the lis between the parties"**. Hence it is just and necessary to allow the application in order to shorten the litigation and to preserve, safeguard the right of the parties and to sub serve ends of justice. Hence considering the facts and circumstances of the present case and the decision cited above, it is just and necessary to allow the application. If the same is allowed no harm or loss will be caused to the plaintiff, per contra it will assist the court to determine the real questions in controversy between the parties and also for proper adjudication of the matter it is just and necessary to allow defendant No.1 to amend the

written statement. The contention of plaintiff about delay can be compensated by imposing cost. **Accordingly the point No. 1 is answered in the affirmative.**

12. POINT NO.2: In view of the above discussion I proceed to pass the following;

ORDER

I.A.No.8 filed U/O. VI Rule 17
R/W Sec. 151 of CPC by the
applicant/defendant No.1 to amend
the written statement is hereby
allowed on cost of Rs.200/-.

The applicant/defendant No.1 is
permitted to amend the written
statement as stated in the application
and furnish amended written
statement.

(Dictated to the Stenographer transcribed and typed by her, the same is corrected and then pronounced by me in the Open Court on this 11th October 2023.)

(Shri.Nagesh Patil)
Ist Addl. Civil Judge & JMFC
Chikodi