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O.S./101/2021

**IN THE COURT OF PRL. SENIOR CIVIL JUDGE & JMFC,
JAMKHANDI.**

Present:

**Shri.Rajashekhar.S. Harsoor
B.A. LL.B.,**

Prl. Senior Civil Judge & JMFC, Jamkhandi.

O.S No.101/2021

Dated this, the 27th day of June, 2025.

1. Smt. Rahematbi W/o Rafiq Hundekar.

... Plaintiff

(Represented by Sri.P.V.K., Advocate)

- Vs -

1. Noormohammad S/o Gudusab Nidoni
and others.

... Defendants

(Defts. No.1, 2, 6, 7 & 9 represented by Shri.A.P.K., Adv)

(Defts. No.3 to 5 placed Ex-parte)

(Deft.No.8 represented by Sri.T.H.S., Advocate)

(Deft No.10 represented by Sri.D.M.J., Advocate)

: PARTIES IN I.A No.XI :

1. Noormohammad S/o Gudusab Nidoni.
2. Umarsab S/o Gudusab Nidoni.

..Applicants/Defendant No.1 & 2**- Vs -**

1. Smt. Rahematbi W/o Rafiq Hundekar.

..Opponent/Plaintiff*********

i.	Provision under which the application is filed	:	U/o.VI Rule 17 R/w. Sec. 151 of CPC.
ii.	Relief sought for	:	Seeking amendment of written statement as per proposed amendment.
iii.	The date on which the application is filed	:	24.02.2025.
iv.	Number of the application	:	I.A.No.XI
v.	The date on which the objection is filed by different opponents	:	12.06.2025.
vi.	The date on which the order was passed on the said application	:	27.06.2025.

: ORDER ON I.A No.XI:

1. The defendants No.1 & 2 have filed IA.No.XI U/o.VI Rule 17 R/w Sec.151 of CPC seeking leave to amend their written statement as per proposed amendment.

2. In support of above application, the defendant No.2 has sworn to an affidavit, wherein he has mainly stated that, the plaintiff is his sister. Himself and plaintiff are governed by Mohammedan law. The plaintiff has filed this suit for the relief of partition & separate possession claiming her share in the suit schedule properties. He further stated that, his father by name Gudusab had effected partition orally during his life time, in the year-1994. Neither plaintiff nor other defendants challenged said oral partition. As per said oral partition himself & defendant No.2 are cultivating the suit schedule properties since 1994. Neither the plaintiffs nor other defendants have obstructed to their peaceful possession & enjoyment of the suit schedule properties. Thereby himself & defendant No.2 have perfected their title over the suit schedule properties by way of adverse possession. Hence, he wants to incorporate the plea of adverse possession in his written statement by way of amendment. If above application is allowed no harm will be caused to the plaintiff. On the other hand, if not allowed himself & defendant No.2 will be put to irreparable loss. With this the defendant No.1 has prayed to allow above application.

3. On the contrary counsel for the plaintiff has filed objection to above application. He has contended that, the application filed by the defendants No.1 & 2 is false, frivolous and not maintainable in the eye of law. The reasons assigned by the defendant No.1 are all false. The defendants No.1 & 2 have filed above application, with ulterior motive, when the matter was fixed for plaintiffs evidence. It is further contended in the objection that, the amendment is nothing but to fill up the lacuna of the case of the defendants. In fact the defendants No.1 & 2 had clandestinely got entered their names in the record of rights of the suit schedule properties. The illegal mutation entries will not effect right of the plaintiffs over the suit schedule properties. The proposed amendment will change the nature of the suit. Hence it is impermissible under law. With this counsel for the plaintiff prayed for rejection of above application with costs.
4. Heard both side. Perused the application, objection, pleadings & all other materials placed on record. Upon going through the same, the following points arise for consideration:

POINTS

1. Whether the defendants No.1 & 2 have made out grounds to allow them to amend their written statement as per proposed amendment?
 2. What order ?
5. Having heard arguments canvassed by both the counsels and upon going through the materials on record, this court answers to above points as under:

Point No.1 : In the affirmative.

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

: REASONS :

6. **Point No.1** : The plaintiff has filed this suit for the relief of partition & separate possession claiming 1/8th share in the suit schedule properties and for other equitable reliefs.
7. As per the materials on record, the defendants No.1 & 2 have filed above application when the matter was set down for further examination-in-chief of PW-1. As stated above, the plaintiff has instituted this suit for the relief of partition & separation possession claiming her share in the suit schedule properties. The defendants No.1 & 2 have denied the right of the plaintiff over the suit schedule

properties. They have specifically contended that, since their father by name Gudusab had allotted the suit schedule properties in their favour during his lifetime by way of oral partition, the plaintiff has no right to challenge the same. Now in pursuance of said contention, the defendants No.1 & 2 want to take another defence that, they have perfected their title over the suit schedule properties by way of adverse possession.

8. The plaintiffs have not concluded their evidence. PW-1 has not completed her examination-in-chief. Moreover the burden lies upon the defendants No.1 & 2 to prove their aforesaid contention. Therefore, if the defendants No.1 & 2 are permitted to plead their defence at this initial stage of the suit, on reasonable costs, no harm or prejudice would be caused to the plaintiff. In view of above discussion, point No.1 is answered in the Affirmative.

9. **Point No.2:** In view of above findings, the following order is passed:

: O R D E R :

I.A.No.XI filed U/o.VI Rule 17 R/w Sec.151 of CPC by the defendants No.1 & 2 is hereby allowed on cost of Rs.500/-.

The defendants No.1 & 2 are permitted to carry out amendment in the written statement as per proposed amendment and furnish written statement.

Call on 10-07-2025.

(Dictated to the stenographer directly on computer, typed by her, transcript corrected and signed by me, and then pronounced in the open Court on 27th day of June, 2025)

Sd/-
(Sri. Rajashekhar S. Harsoor)
Prl. Senior Civil Judge & JMFC,
Jamkhandi.