

**IN THE COURT OF
THE SENIOR CIVIL JUDGE AND JMFC AT HIRIYUR**

Dated this the 30th day of August 2022

**Present: SRI MOHAMMED MOINUDDIN,
B.A., LL.B., (Spl.)**

Senior Civil Judge & JMFC, Hiriya

OS No.49/2014

PARTIES TO I.A.NO.XV

**Applicant : Rajashekar & Others (defendant
No.8 to 10)**

Vs.

Opponents: Rathnamma & others

ORDERS ON I.A.No.XV

The defendant No.8 to 10 have filed this application U/O VI Rule 17 R/W 151 of CPC seeking permission to amend the written statement to add Para No.15(a) and also one more paragraph in their written statement.

2. The defendants have submitted that, due to non availability of the registered WILL they could not explain the relevant facts about acquisition rights over the suit property by their father. And recently they have traced it and this document is most relevant to prove their defense. Hence, they have contended that, the proposed amendment is just and necessary to adjudicate the

controversy between the parties. As such the applicants have prayed to allow the application in the interest of justice.

3. The plaintiffs have filed objections strongly contending that, the proposed amendment will change the nature of suit. If the same is allowed the plaintiffs will be put to greater hardship and injustice and the also submitted that the proposed amendment is not at all necessary to adjudicate the issues between the parties.

4. The defendants are not entitled for any relief as such they have prayed to reject the application with cost.

5. The following point arises for consideration:

1. Whether the applicants/defendant No.8 to 10 have satisfied that, the proposed amendment is just and necessary?

6. I have heard the arguments from both sides and perused the available materials my finding to the above point is in affirmative for the following:

REASONS

7. **POINT No.1:-**The plaintiffs have filed this suit to allot their 1/4th share in suit properties by partition by metes and bounds. As per their contentions the partition deed executed on 31.01.1996 is not a lawful document because the lesser share has

been allotted to the defendant No.1 and more properties have been given to Giriyappa and his sons. Further they have submitted that, said partition deed has been created by deceased Giriyappa with his sons in collusion with defendant No.1 to 4. They have also contended that, said partition deed is a nominal document as such prayed to declare it as null and void and not binding on their rights.

8. On the other hand the defendants No.8 to 10 in their written statement have denied the entire claim of the plaintiffs and defended the partition dated 31.01.1996 in respect of the suit properties. But they have not stated as to why lesser share was allotted to the defendant No.1 and more properties were given to Giriyappa and selves. Now by way of proposed amendment they have submitted that, in view of execution of registered will dated 22.05.1953 by Eramma $1/3^{\text{rd}}$ share in Sy.No.222 of Samudranahalli village was allotted to her elder daughter by name Giriyamma w/o Mariyappa and suit item No.1 was bequeathed in favor of Rangappa S/o Erappa and Giriyappa jointly. After the death of Eramma all the beneficiaries under the said will have accepted the respective shares allotted to them and

they were in exclusive possession and enjoyment of the same. Therefore, the learned counsel for applicants has argued that, in view of execution of Will in respect of the suit properties subsequently in a oral partition dated 31-01-1996 lesser share has been allotted to defendant No.1 as admitted in the plaint.

9. The main contention for proposed amendment is unless the defendants No.8 to 10 are allowed to amend their written statement by adding additional plea they will not be in a position to substantiate their defense properly. On the other hand the learned counsel for plaintiffs has argued that, the proposed amendment is highly belated and there is no proper reason as to why the applicants kept mum for so many years as such at this stage the proposed amendment cannot be allowed as it is against to the provisions of Order VI rule 17 of CPC. Hence the learned counsel prayed to reject the application.

10. It is well settled law that, the rules governing the amendment of plaint and written statement are altogether different. In case of amendment of plaint the court should be rigid whereas in case of written statement it should be liberal the only rider is that, by way of amendment the defendant should not

be allowed to withdraw any admission already in his written statement. Further the test laid under proviso to Order VI rule 17 of CPC should be passed by a applicant before seeking amendment.

11. Of course, the proposed amendment is belated but considering the fact that, the registered will dated 22-5-1953 has been traced by the defendants No.8 to 10 which has been allegedly executed by Late Eramma. Interestingly the plaintiffs in their objections to this application have not said a word of denial about said testamentary document. It does not mean that, they have admitted the same but looking from the point of defense of defendant No.8 to 10 particularly the justification for allotment of lesser share in the partition dated 31-01-1996 the proposed amendment is essential to adjudicate the controversy between the parties. As regards the delay is concerned since the applicants have fairly admitted that, recently the will has been traced by them and then only they came to know about additional facts of allotment of lesser share. Therefore, I am of the opinion that, at earlier stage of the suit the defendants No.8 to 10 could not have bring the proposed amendment.

12. Besides, if the proposed amendment is allowed it will not lead to withdrawal of any admissions from the defendants No.8 to 10 side. Therefore, I am of the opinion that, the proposed amendment is just and necessary to adjudicate the controversy between the parties if the application is rejected the defendants No.8 to 10 will not be in a position to prove their defense properly. If the application is allowed, then the plaintiffs will not be put to any hardship or inconvenience. It is also well settled law that, all amendments should be allowed unless they are barred by law. In the instant case I do not find any circumstances or law which bars the proposed amendment in fact the proposed amendment is just and necessary. As such by imposing reasonable cost on the applicants the same is deserved to be allowed. Accordingly, I answer the above point in affirmative. In the result I proceed to pass the following:

ORDER

The IA No.XV filed by the defendant No.8 to 10 is U/O. VI Rule 17 R/W Sec.151 of CPC is allowed on costs of Rs.1500/-.

Thereby, they are permitted to carryout necessary amendment in the written statement within 7 days from this order and

they shall furnish amended written statement

also. For compliance by 19.07.2022

(Dictated directly to the steno, he typed on lap top, corrected by me and then pronounced in the open court on this the 30th Day of August 2022)

(MOHAMMED MOINUDDIN)
Senior Civil Judge & JMFC,
Hiriyur