

KACM200002222016



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

**Present:-** Sri. IRFAN.  
*B.A., LL.B.,*  
Senior Civil Judge & JMFC,  
Kadur, Chikkamagaluru District.

Dated: this the 8<sup>th</sup> day of June – 2026.

**FDP No.4/2016**

Petitioners:- Sri. E. Basavaraj,  
Dead by his LR's and another.  
  
(By: Sri. M.N., Advocate)

V/s

Respondents:- Sri. E. Nagaraja,  
Dead by his LR's and others.

(Respondents No.1(a) to 1(c) and Respondent No.5(b)  
by: Sri. S.N.A., Advocate)

(Respondent No.2 by: Sri. S.S., Advocate)

(Respondent No.3 by: Sri. P.R.C., Advocate)

(Respondent No.4 by: Sri. M.M., Advocate)

(Respondents No.5(a), (c), (d) and respondent No.7 by:  
Smt. M.K.M., Advocate).



(Respondent No. 6 – Exparte)

(Proposed respondent No.8 by: Sri. H.T. / G.P.S.,  
Advocates).

(Respondent No.9 by: Sri. K.N.R.K., Advocate)

**RANK OF THE PARTIES ON I.A.NO.IV**

Applicant/  
4<sup>th</sup> respondent : Sri. S.E. Manjunatha.

V/s

Opponents /  
Respondents : Sri. E. Nagaraja,  
Dead by his LR's and others.

i	<i>Provision under which the application is filed</i>	<i>U/O VI Rule 17 R/w Sec.151 of CPC</i>
ii	<i>Relief sought for</i>	<i>Amend the petition.</i>
iii	<i>The date on which the application is filed</i>	<i>14.06.2022.</i>
iv	<i>Number of the application</i>	<i>IV</i>
v	<i>The date on which the objections are filed by different opponent</i>	<i>Objections filed by the 2<sup>nd</sup> respondent on 13.07.2022.</i>
vi	<i>The date on which the orders were passed on the said application</i>	<i>08.06.2026.</i>

*When the case is posted for await orders, the petitioners have filed this application.*

**ORDERS ON I.A.IV**

This interim application has been filed by the applicant / 4<sup>th</sup> respondent, U/O VI Rule 17 R/w



Sec.151 of CPC seeking for the insertion of additional properties to the petition.

2. This application is accompanied by an affidavit filed by the 4<sup>th</sup> respondent. The gist of the application averment is that the schedule properties mentioned in the accompanying application are left over by oversight in the original suit. He came to know that four items mentioned in the accompanying application are acquired by his father. The petitioners and respondents No.1 to 7 being the children of late Eranagabhovi are entitled for equal shares in the said properties. Therefore, it is just and necessary to insert the schedule item No.9 to 12 properties and grant equal shares to the petitioners and the respondents No.1 to 7 in the schedule properties as per preliminary decree passed by this court. Accordingly, sought to allow the application.

3. The 2<sup>nd</sup> respondent resisted the said application by contending that he has preferred an appeal against the judgment and decree passed in OS No.157/2001 before the Hon'ble High Court of Karnataka in RFA No.598/2006 under Section 96 of CPC. In the said appeal, the 4<sup>th</sup> respondent has filed an



application for staying the operation of judgment and decree passed in OS No.157/2001 and the Hon'ble High Court of Karnataka passed the order and granted the interim stay order in the said appeal and said interim order is extended until further order. The aforesaid appeal is still pending. As such the application filed by the 4<sup>th</sup> respondent is not maintainable. The application filed by the 4<sup>th</sup> respondent is belated one and he has filed this application after the lapse of 21 years. The 4<sup>th</sup> respondent has filed this application for amendment after the trial and after the judgment and decree passed in OS No.157/2001. The proviso of Order VI Rule 17 of CPC states that court will not allow the application of amendment after the trial has been commenced unless court comes to the conclusion that the party did not raise the relevant facts before the commencement of trial. But, in this case, after the judgment and decree, the 4<sup>th</sup> respondent come before this court along with an application U/O VI Rule 17 CPC, for amendment in the above said case. There is no valid grounds to allow the application. The application filed by the 4<sup>th</sup> respondent is not with in the parameter of Order VI Rule 17 of CPC. The 4<sup>th</sup> respondent trying to insert item No.9 to 12



after item No.8 in the petition, but no such amendment application would be allowed in FDP proceedings since there is no preliminary decree passed with respect to the said properties. There is a several years of delay and latches, but the 4<sup>th</sup> respondent has failed to explain the each and every day of delay in filing the above application and accordingly, it is sought to dismiss the application.

4. Heard both side. Perused the case records. The respective counsel for the applicant / 4<sup>th</sup> respondent and opponent / 2<sup>nd</sup> respondent have also filed their written notes of arguments. The petitioners or other contesting respondents have not filed any objections.

5. The following points that arise for consideration are;

1. Whether the proposed amendment is permissible and necessary for determining the real dispute in controversy between the parties?
2. What order?



6. Answers to the above points are as under;

Point No.1 : In the Negative;

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

### **REASONS**

7. **Point No.1** :- The petitioners have instituted this petition seeking for the relief of final decree proceedings based on the judgment and preliminary decree under OS No.157/2001 with respect to petition schedule item No.1 to 8 properties. RFA No.598/2006 is already been dismissed. The 4<sup>th</sup> respondent has filed this application seeking for the insertion of application schedule item No.1 to 4 properties in the schedule of the petition by contending that the said properties were acquired by late Eranagabhovi and are also liable for division amongst the petitioners and respondents. Therefore, in order to insert the said properties, it is sought to amend the schedule of the petition. First of all, if at all, the applicant / 4<sup>th</sup> respondent contends that the application schedule properties are also amenable for partition and were left over in the earlier suit proceedings under the preliminary decree, he cannot seek for the amendment of the petition



schedule, but can independently assert his rights over the said properties under the final decree proceedings also. In a partition suits, the court may draw more than one preliminary decree and therefore the inclusion of omitted properties is not improper. However, it is also necessary to make a specific note of the fact that the applicant / 4<sup>th</sup> respondent has not filed any iota of documents to prima-facie demonstrate that the application schedule item No.1 to 4 properties were held by his father Eranagabhovi. Thus, it is crystal clear that there are no prima-facie materials made available on record and in the absence of the same, the applicant / 4<sup>th</sup> respondent cannot be permitted to seek for insertion of application schedule properties in order to lay a claim over the same for partition. Therefore, the present application is devoid of merits and same is liable to be dismissed. Accordingly, the **point No.1 under consideration is answered in the Negative.**

8. **Point No.2** :- In view of the discussion in the foregoing point, the following;

**ORDER**

I.A.IV filed by the  
applicant / 4<sup>th</sup> respondent,



under Order VI Rule 17 R/w  
Sec.151 of CPC is dismissed.

No order as to costs.

(Dictated to the Stenographer on computer, corrected, initialed and then pronounced by me in open Court on this the 8<sup>th</sup> day of June, 2026)

(IRFAN)  
Senior Civil Judge,  
Kadur.