

KACM200004632022



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

**Present :- Smt. Sujatha Suvarna B.,**  
B.Com., LL.B.,  
Senior Civil Judge and JMFC, Kadur,  
Chikkamagaluru District.

Dated this the 18<sup>th</sup> Day of January – 2024.

**O.S. No.140/2022**

Plaintiff :

Sri. Thimmappa,  
S/o Late Purudappa,  
Aged about 69 years,  
Agriculturist,  
R/o Hulegondhi Village,  
Singatagere Hobli,  
Kadur Taluk.

(By: Sri. B.M. Sunil Kumar, Advocate)

V/s

Defendants :

1. Sri. Malleshappa,  
S/o Late Purudappa,,  
Aged about 67 years,  
Agriculturist,

2. Smt. Chandramma,  
D/o Late Purudappa,,  
W/o Late Thimmaiahappa,  
Aged about 71 years,  
House wife,
3. Smt. Sharadamma,  
D/o Late Purudappa,  
W/o Malleshappa,  
Aged about 64 years,  
House wife,  
R/o Hiriyur Village,  
Banavara Hobli,  
Arsikere Taluk.
4. Smt. Maheshamma,  
D/o Late Purudappa,,  
W/o Halappa,  
Aged about 61 years,  
House wife,  
R/o Channapura Village,  
Saraswathipura Post,  
Kasaba Hobli, Kadur Taluk.
5. Smt. Anusuyamma,,  
W/o Late Nanjundappa,,  
Aged about 46 years,  
House wife,
6. Smt. Sheela,  
D/o Late Nanjundappa,,  
W/o B.R. Chandrashekar,  
Aged about 33 years,  
R/o No.43, 6<sup>th</sup> Cross, 9<sup>th</sup> Main Road,  
Dugallamma Layout, Laggere,  
Bengaluru – 560 058.

7. Sri. Vinodh N,  
S/o Late Nanjundappa,  
Aged about 34 years,

[Defendants No.6 & 7 are the  
daughter and son of defendant No.5]

Defendants No.1, 2, 5 and & 7  
R/o Hulegondhi Village,  
Singatagere Hobli,  
Kadur Taluk.

[Defendants No.1, by Sri. A.S. Narasimha Bharathi,  
Advocate]

[Defendants No.2 to 7 by Sri. Ramesh M, Advocate]

**RANK OF THE PARTIES ON IA NO.IX**

Applicant / Defendant No.1: Malleshappa.

V/s

Opponent / Plaintiff : Thimmappa.

i	<i>Provision under which the application is filed</i>	<i>U/O 6 Rule 17 of CPC</i>
ii	<i>Relief sought for</i>	<i>Amend the written statement.</i>
iii	<i>The date on which the application is filed</i>	<i>23.09.2023.</i>
iv	<i>Number of the application</i>	<i>IX</i>
v	<i>The date on which the objections are filed by different opponent</i>	<i>21.11.2023.</i>
vi	<i>The date on which the orders were passed on the said application</i>	<i>18.01.2024.</i>

**ORDER ON IA NO.IX**

The applicant / defendant No.1 has filed I.A No.IX, under Order 6 Rule 17 of CPC and prays to permit him to amend the written statement as stated in the application. When the case is posted for cross of PW-1, the defendant No.1 has filed this application.

2. In support of the application, the defendant No.1 has filed affidavit and stated that, while filing the written statement he did not mention the proposed amendment and he recently came to know about the said facts. Hence, it is just and necessary to amend the written statement.

3. Per contra, the plaintiff has filed objection and stated that, the defendant No.1 has not produced the relevant documents and in order to cause the delay and drag on the proceedings the defendant has filed this application. Hence, prays to reject the application.

4. Heard the arguments.

5. The points that arise for my consideration is as follow :

1. Whether the defendant No.1 has made out sufficient grounds to amend the written statement?

2. What order?

6. My answer to the above points are as follows:-

Point No.1 - In the affirmative;

Point No.2 - As per final order,  
for the following

### **REASONS**

7. **Point No.1:-** It is the case of the defendant No.1 that, in the proposed amendment the defendant stated that his mother was purchased the item No.4 of the suit schedule property from S.B. Shekharappa and his brother. The defendant No.1 further contended that, his mother had purchased the item No.6 of the suit schedule property from Doddmane Gangappa and his sons.

8. AIR 2007 SC 806 Vidyabai & Others between Padmalatha and another In the Para No. 14 it is observed as follows.

*It is the primal duty of the court  
to decide as to whether such an*

*amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed.*

However, proviso appended to order VI rule 17 of code restricts the power of the court. It puts an embargo on exercise of its jurisdiction. the court's jurisdiction, in a case of this nature is limited. Thus, unless the Jurisdictional fact, as envisaged therein, is found to be existing, the court will have no jurisdiction at all to allow the amendment of the plaint

9. Under order 6 Rule 17 of CPC, reads as :

*“As per order VI Rule 17 the court may at any stage of proceeding allow, either party to alter or amend his pleading in such term as may be just and all such amendments shall be made as may be necessary for determining the real questions in controversy between the parties”.*

Order 6 Rule 17 of CPC empowered the court to permit the parties to amend their pleading. It is established principle that the amendment application has to be liberally dealt with and whenever it is made out that amendment is necessary to elucidate the matter

in dispute and to avoid the multiplicity of the proceedings then such application has to be allowed.

10. In this regard, this court would rely upon the principle laid down by the Hon'ble Supreme Court in the decisions reported in Civil Appeal No. 5909 of 2022 (Arising out of SLP(C) No. 22443 of 2019) in between Life Insurance Corporation of India V/s Sanjeev Builders Private Limited & another.

Para No.70:- Our final conclusions may be summed up thus:

*(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 of the CPC.*

*(iii) The prayer for amendment is to be allowed*

*(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and*

*(ii) to avoid multiplicity of proceedings, provided*

*(a) the amendment does not result in injustice to the other side,*

*(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and*

*(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).*

*(iv) A prayer for amendment is generally required to be allowed unless*

*(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,*

*(ii) the amendment changes the nature of the suit,*

*(iii) the prayer for amendment is malafide, or*

*(iv) by the amendment, the other side loses a valid defence.*

*(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.*

*(vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more*

*satisfactory decision, the prayer for amendment should be allowed.*

*(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.*

*(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.*

*(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.*

*(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.*

11. The plaintiff has filed this suit against the defendants for partition and separate possession. As per the contention of the defendant No.1 is that, his mother

purchased the item No.4 and 6 of the suit schedule properties and the plaintiff is not having any right over the said properties. To prove all these facts full pledge trial is required. The proposed amendment is just and necessary to decide the controversy between the parties. Hence, considering the fact and circumstances it is fit case to allow the application with cost. Accordingly point No.1 is answered in the **Affirmative**.

12. **Point No.2** :- In view of the findings on the above point, I proceed to pass the following:

**ORDER**

I.A.No.IX filed by the applicant /  
defendant No.1, under Order VI Rule 17  
R/w Sec.151 of CPC is hereby allowed  
with cost of Rs.150/-.

(Dictated to the Stenographer directly on the computer, corrected, initialed and then pronounced by me in open court on this 18<sup>th</sup> day of January-2024)

Sd/-  
(SUJATHA SUVARNA B.),  
Senior Civil Judge, Kadur.