

KACM200004932019



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 12th day of December - 2025

O.S. No. 99/2019

Plaintiffs : Smt. Chandrakala & others.

(By: Smt. B.R.R., Advocate)

-V/s-

Defendants: Sri. Panchakshari & others.

(Defendants No.1 & 2 by: Sri. S.N.A. Advocate)
(Defendants No.3 & 4 by: Sri. B.M.P. Advocate)

RANK OF THE PARTIES ON I.A.NO.13

Applicants/
Plaintiffs : Smt. Chandrakala & others.

V/s

Opponents/
Defendants: Sri. Panchakshari & 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 plaint</i>
iii	<i>The date on which the application is filed</i>	<i>16.10.2025</i>
iv	<i>Number of the application</i>	<i>13</i>
v	<i>The date on which the objections are filed by different opponent</i>	<i>23.10.2025 by the defendants No.3 & 4.</i>
vi	<i>The date on which the orders were passed on the said application</i>	<i>12.12.2025.</i>

When the case is posted for arguments,, the plaintiffs have filed this application.

ORDERS ON I.A.13

This interim application has been filed by the plaintiffs, U/O VI Rule 17 R/w Sec.151 of CPC seeking for the insertion of additional pleadings to the plaint by contending that they have filed this suit against the defendants for the relief of partition and separate possession. Now the defendant No.4 namely Ravikumar has filed impleading application and also additional written statement by alleging that item No.7 and 8 of the schedule properties bequeathed by Hanumanthappa in his favour and because of the reason, he is a minor, the katha has been standing in the name of his mother Nanjundamma and the said Ravikumar has been examined through his Special



Power of Attorney holder namely Shashidhar. Now the case is posted for arguments on their side and because of that she has not sought relief with respect to alleged registered Will dated 19.12.1978 since the revenue documents are standing in the name of Nanjundamma, even the alleged Will does not reflect in the encumbrance certificate with respect to the item No.7 and 8 of the scheduled properties. Hence, she has been advised to file this application seeking appropriate relief with respect to the alleged Will dated 19.12.1978. Hence, prays to allow the application.

2. The defendants No.3 and 4 have filed objections and requested to consider the para No.4 and 5 of the written statement of 4th respondents as part of this objection. One Chennabasappa and Hanumanthappa are the brothers. The said Chennabasappa had two daughters namely Parvathamma (mother of plaintiff and defendants No.1 and 2) and Najundappa (3rd defendant). The suit schedule item No.7 and 8 properties belonged to said Hanumanthappa and he died without leaving any properties as well as legal heirs. The suit schedule item No.7 and 8 properties are self-acquired properties of Hanumanthappa and he got exclusive rights over the



said properties. The said Hanumanthappa during his life-time, has legally executed the registered Will in favour of defendant No.4 on 19.12.1978 and same is acted upon, by virtue of said registered Will, the 4th defendant became the owner and in possession over the suit schedule item No.7 and 8 properties and same are exclusive properties of 4th defendant. The plaintiffs and defendants No.1 and 2 or their mother namely Parvathamma have no right to seek partition or share over the schedule item No.7 and 8 properties, hence, the said Will is definitely binding to the plaintiffs and also to all those who are claiming rights. The plaintiffs have filed this application by suppressing the true facts and with an intention to grab the properties. The plaintiffs have filed this application only to drag on the matter and the said amendment is barred by limitation. Accordingly, it is sought to dismiss the application.

3. Heard both side. Perused the case records.

4. The following points that arise for consideration are;

1. Whether the proposed amendment is necessary for determining the real dispute



in controversy between the parties?

2. What order?

5. Answers to the above points are as under;

Point No.1 : In the Affirmative;

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

REASONS

6. **Point No.1 :-** The present suit is one for the relief of partition and separate possession. It is a matter of fact that when the matter was posted for arguments on merits, the plaintiffs have come up with this application seeking for amendment of plaint with a prayer to seek additional relief to declare that the alleged will dated 19.12.1978 executed by Hanumanthappa in favour of 4th defendant with respect to suit schedule item No.7 and 8 properties does not bind their legitimate share.

7. It is also a matter of record that during the pendency of suit, the 4th defendant got himself impleaded, wherein, both the defendants No.3 and 4 in their written statement have disclosed regarding the existence of alleged Will dated 19.12.1978 said to have



been executed by Hanumanthappa in favour of 4th defendant with respect to suit schedule item NO.7 and 8 properties. As per the contention of the plaintiffs, the said properties are divisible amongst defendants and themselves and according to the specific case of the defendants No.3 and 4, the aforesaid properties are the self acquired properties of Hanumanthappa and claimed that the alleged will so executed by the said Hanumanthappa in favour of 4th defendant conveys absolute right and the plaintiffs have no right to claim any share in the said properties. Already additional issues have been framed and evidence in that regard has also be concluded.

8. The plaintiffs in order to incorporate the prayer regarding the alleged Will contending that same does not bind their legitimate share have sought for amendment under this application. Since, the proposed amendment touches upon the core of the subject, the proposed amendment found to be just and essential in order to determine the controversy between the parties on merits. No doubt, the present application has been filed after the commencement of trial. But at the same stage, it is also necessary to refer the finding of the **Hon'ble Supreme Court of India reported in 2023(1)**



KCCR 1 (SC) between Life Insurance Corporation of India V/s Sanjeev Builders Pvt. Ltd., and another, wherein the Hon'ble Supreme Court of India was pleased to set guidelines for consideration of the applications filed under Order 6 Rule 17 of CPC for the amendment of pleading which are as follows;

“B.CIVIL PROCEDURE CODE,1908- Order 6 Rule 17 -Amendment of pleadings-Rile of courts-Principles to be applied-All amendments to be allowed-Amendment shall not cause prejudice to the other side which cannot be compensated by costs-Amendment after statutory period-Discussed and stated ultimately that the amendments should be allowed liberally.

The principles applicable to the amendments of the plaint are equally applicable to the amendments of the written statements. The courts are more generous in allowing the amendment of the written statement as question of prejudice is less likely to operate in that event. The defendant has a right to take alternative plea in defence which, however, is subject to be an exception that by the proposed amendment other side should not be subjected to injustice and that any admission made in favour of the plaintiff is not withdrawn. All amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original lis was raised or defence taken. Inconsistent and



contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts should not be allowed to be incorporated by means of amendment to the pleadings. The proposed amendment should not cause such prejudice to the other side which cannot be compensated by costs. No amendment should be allowed which amounts to or relates in defeating a legal right accruing to the opposite party on account of lapse of time. The delay in filing the application for amendment of the pleadings should be properly compensated by costs and error or mistake which, if not fraudulent, should not be made a ground for rejecting the application for amendment of plaint or written statement. Every application for amendment has to be tested in the applicable facts and circumstances of the case. As the proposed amendment of the pleadings amounts to only a different or an additional approach to the same facts, this Court has repeatedly laid down the principle that such an amendment would be allowed even after the expiry of statutory period of limitation.

The court also held further that 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 6 rule 17 of CPC.

The prayer for amendment is to be allowed (I) 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 (c)



admission made by the party which confers a right on the other side and (4) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right(in certain situations).

(ii) 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 is malafide, or

(iv) by the amendment, the other side losses a valid defences.

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

(vi) Where the amendment should 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) Whether 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) Whether 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.

(xi) Where the amendment is sought before commencement of trial, the Court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the Court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed”

In consideration of the same, if the facts and circumstances of the case on hand are taken, the proposed amendment is very much essential in order to determine the real controversy between the parties. If



this application is rejected, the plaintiffs will be put into irreparable loss and injury, which cannot be compensated in terms of money. Accordingly, the **point No.1 under consideration is answered in the Affirmative.**

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

ORDER

I.A.13 filed by the
plaintiffs, under Order VI
Rule 17 R/w Sec.151 of CPC
is allowed with costs of
Rs.500/-.

(Dictated to the Stenographer on computer, corrected, initialed and then pronounced by me in open Court on this the 12th day of December, 2025)

Sd/-

(IRFAN)
Senior Civil Judge,
Kadur.