

KACM200005012020



**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 5<sup>th</sup> September – 2024

**O.S.No.164/2020**

Plaintiff: : Smt. S.K. Latha.

(By: Sri S.N.G. Advocate)

V/s

Defendants: : Smt. Meenakshamma & others.

(Defendants No.1 and 8 by: N.S., Advocate)

(Defendant No.3 by Sri. B.R.H., Advocate)

(Defendants No.2 and 4 to 7 by: Sri. N.N.V., Advocate)

**RANK OF THE PARTIES ON I.A.NO.11**

Applicant/  
plaintiff : Smt. S.K. Latha,  
V/s  
Opponents/  
Defendants : Smt. Meenakshamma & 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>07.02.2024.</i>
iv	<i>Number of the application</i>	<i>11</i>
v	<i>The date on which the objections are filed by different opponent</i>	<i>05.03.2024. by the 3<sup>rd</sup> defendant.</i>
vi	<i>The date on which the orders were passed on the said application</i>	<i>05.09.2024.</i>

**ORDERS ON I.A.11**

This interim application has been filed by the plaintiff under Order VI Rule 17 R/w Sec.151 of CPC seeking leave of the court to amend the plaint and to insert the application schedule amendment accordingly.

2. The present application is accompanied by an affidavit filed by the plaintiff. The gist of the application averment is that the plaintiff has instituted this suit

seeking for the relief of partition and separate possession claiming her 1/6th share in the suit schedule properties, wherein the 3<sup>rd</sup> defendant in his written statement disclosed regarding the execution of alleged Will dated 12.12.2006 alleged to have been executed by S.B.Kalleshappa in favour of 3<sup>rd</sup> defendant. Said S.B.Kalleshappa was suffering for serious health issues and had no exclusive right to execute the alleged Will. The said Will has been forged by the 3<sup>rd</sup> defendant in order to grab the valuable properties. Since the 3<sup>rd</sup> defendant disclosed regarding the alleged Will, it is sought to incorporate necessary pleadings by way of amendment to the plaint.

3. The 3<sup>rd</sup> defendant has filed detailed objections denying all the application averments as false and frivolous and asserted that the suit schedule properties are the exclusive properties of S.B.Kalleshappa and it is specifically claimed that said S.B.Kalleshappa had duly executed the Will dated 12.12.2006 in his favour with respect to the suit schedule property and it is specifically claimed that the plaintiff has no right to claim any right in the suit schedule properties as all the suit schedule properties

are not the joint family properties. The proposed amendment to the plaint does not arise and accordingly sought to dismiss the application.

4. Heard.

5. Perused the case records.

6. The points that arise for consideration are as follows:

1. Whether the proposed amendment to the plaint is necessary for adjudication of real controversy between the parties?

2. What order?

7. The above points are answered as follows:

Point No.1 - In the Affirmative,

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

### **REASONS**

8. **Point No.1** :- This is for the relief of partition and separate possession, wherein the plaintiff claimed her 1/6th share in the suit schedule properties. It is a

matter of record that the 3<sup>rd</sup> defendant in his written statement has disclosed regarding the existing of alleged Will dated 12.12.2006 said to have been executed by his father S.B.Kalleshappa. When the matter was posted for cross-examination of 3<sup>rd</sup> defendant, who deposed as DW-3 the instant application seeking for incorporation of application schedule amendment to the plaint is filed with an order to incorporate necessary pleadings regarding stand of plaintiff on the alleged Will. By considering the said aspect, since the existence of Will is disclosed by the 3<sup>rd</sup> defendant during the pendency of the suit, it is found necessary to permit the plaintiff to incorporate necessary pleadings as sought under this application in order to adjudicate the real controversy between the parties to the suit. It is a matter of records that though the written statement of 3<sup>rd</sup> defendant was filed during the year 2021 itself, but the present application is filed after lapse of about three year that too when the matter is pending for cross-examination of DW-3. Therefore, the plaintiff is liable to pay cost. Accordingly, the **point under consideration is answered in the Affirmative.**

9. **Point No.2:-** For the reasons discussed above, the following;

**ORDER**

The IA No.11 filed by the plaintiff under Order VI Rule 17 R/w Sec.151 of CPC is allowed with costs of Rs.500/-.

The plaintiff is permitted to insert the proposed amendment in the plaint by way of amendment.

(Dictated to the Stenographer on computer, corrected, initialed and then pronounced by me in open Court on this the 5<sup>th</sup> day of September, 2024)

Sd/-

(IRFAN)  
Senior Civil Judge,  
Kadur.