

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 13th June – 2025

O.S.No.164/2020

Plaintiff: : Smt. S.K. Latha.
[By: Sri. SNG, Advocate]

V/s

Defendants: : Smt. Meenakshamma & others.

[Defendants No.1 & 8 by: Sri. N.S., Advocate]

[Defendants No.2 and 4 to 7 by: Sri. N.N.V., Advocate]

[Defendants No.3 by: Sri. B.R.H., Advocate]

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

Applicant/
Plaintiff : Smt. S.K. Latha.

V/s

Opponents/
Defendants : Smt. Meenakshamma & others.



<i>i</i>	<i>Provision under which the application is filed</i>	<i>U/O VI Rule 17 R/w Sec.151 of CPC</i>
<i>ii</i>	<i>Relief sought for</i>	<i>Amend the plaint.</i>
<i>iii</i>	<i>The date on which the application is filed</i>	<i>04.03.2025.</i>
<i>iv</i>	<i>Number of the application</i>	<i>XII</i>
<i>v</i>	<i>The date on which the objections are filed by different opponent</i>	<i>28.03.2025 by the 3rd defendant</i>
<i>vi</i>	<i>The date on which the orders were passed on the said application</i>	<i>13.06.2025.</i>

ORDERS ON I.A.XII

This interim application has been filed by the applicant / plaintiff, U/O VI Rule 17 R/w Sec.151 of CPC seeking for the insertion of application schedule additional properties to the plaint by way of amendment.

2. This application is accompanied by an affidavit filed by the plaintiff. In the application it is contended that the plaintiff has institute the suit seeking for the relief of partition and separate possession. The application schedule properties belongs to one Kalleshappa, the father of plaintiff and the said properties are also liable to be partitioned amongst the plaintiff and defendants. The proposed



amendment will not change the nature of suit or cause of action. Accordingly, sought to allow the application.

3. This application has been resisted by the 3rd defendant vide detailed objections, wherein it is admitted that the application schedule properties belongs to Kalleshappa, but claims that under a Will dated 12.12.2006, the said properties were bequeathed in favour of Sri. S.K. Chandrashekar, the younger son of Kalleshappa. It is claimed that said Sri. S.K. Chandrashekar and his wife Smt. Vasantha (4th defendant) were in possession and enjoyment over the said properties and it is specifically claimed that after the death said Sri. S.K. Chandrashekar, the 4th defendant has become absolute owner of the application schedule properties. The claim of the plaintiff over the said properties has been specifically denied. Accordingly, sought to dismiss the IA.

4. Heard both side. Perused the case records.

5. 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?

6. 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

7. **Point No.1 :-** The present suit is one for the relief of partition and separate possession with respect to the suit schedule properties. By way of amendment, the plaintiff intends to add application schedule properties by contending that those properties are also liable for partition. The defendants admits that the application schedule properties belongs to Sri. Kalleshappa as contended in the application, but it is specifically claimed that based on the alleged Will dated 12.12.2006, Sri. S.K. Chandrashekar the husband of 4th defendant has become the absolute owner of the said properties and after his demise, the 4th defendant being the wife of S.K. Chandrashekar is claiming her absolute right over the same. In view of the aforesaid admitted facts, whether the application schedule



properties are amenable for partition or they are the absolute properties of 4th defendant is the subject-matter of the trial, but by considering the nature of the suit, the proposed amendment is found to be necessary in order to completely adjudicate the matter in controversy between the parties.

8. No doubt, this application has been filed at the stage of further cross examination of DW-3 i.e., at the fag-end of the trial, but in view of the ruling of 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 principles laid down in the foregoing landmark judgment, the amendment is permissible at any stage in order to meet the ends of



justice. Indeed, the present application is filed at a much belated stage and by considering the same, it would be proper to award suitable cost to the plaintiff. If this application is rejected same would cause irreparable loss and injury to the plaintiff and same may not 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.XII filed by the
applicant / plaintiff, under
Order VI Rule 17 R/w
Sec.151 of CPC is allowed
with costs of Rs.2,000/-.

(Dictated to the Stenographer on computer, corrected, initialed and then pronounced by me in open Court on this the 13th day of June, 2025)

Sd/-

(IRFAN)
Senior Civil Judge,
Kadur.