

KACM200005602019



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 15th day of July – 2025

O.S.No.127/2019

Plaintiff: : Sri. Sathish Kumar S.B.
[By: Smt. B.R.R. / Sri. S.N.A., Advocates]

V/s

Defendants: : Smt. Rekha Khotari & others.

[Defendants No.1 to 3 – Exparte]

[Defendants No.4 by: Sri. B.R. Advocate]

[Defendants No.5 to 7 by: Sri. C.V.S., Advocate]

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

Applicant/
Plaintiff : Sri. Sathish Kumar S.B.

V/s

Opponents/
Defendants : Smt. Rekha Khotari & 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>05.12.2023.</i>
iv	<i>Number of the application</i>	<i>III</i>
v	<i>The date on which the objections are filed by different opponent</i>	<i>06.02.2024 by the defendants No.5 to 7. 01.06.2024 by the defendant No.4.</i>
vi	<i>The date on which the orders were passed on the said application</i>	<i>15.07.2025.</i>

When the case is posted for further chief of PW-1, the plaintiff has filed this IA.

ORDERS ON I.A.III

This interim application has been filed by the applicant / plaintiff, U/O VI Rule 17 R/w Sec.151 of CPC seeking for furnishing better particulars with respect to suit item No.2 property and also 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 he has filed this suit against the defendants for the relief of partition and separate possession of his legitimate share in the suit schedule properties. During the pendency of the suit, the



defendants colluded with the Town Municipality, Kadur have split the item No.2 of the plaint schedule property into Nine portion as 2(a) to 2(j) of the application schedule properties and obtained the E-katha extracts in their names. The said fact came to his knowledge recently when he obtained the E-assessment extract of the said properties. There is another two joint family properties in existence and recently he has obtained the E-assessment extract of the said properties and came to know that the said properties are also the joint family properties and he has also got right and share over the said properties. The proposed amendment is very much necessary and same will not change the nature of suit. If the application is not allowed then he will be put to untold hardship and humiliation. Accordingly, sought to allow the application.

3. This application has been resisted by the defendants No.4 to 7 vide detailed objections, wherein they have asserted that the present application on hand is misconceived and there are no supporting documents produced to that effect. In a previously instituted suit under OS No.451/2014, which was withdrawn, the plaintiff has not shown the application schedule properties and the said properties are sought



to be included herein for unlawful gain. No reasonable grounds are made out to allow this application. 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. Under this application, it is contended that the defendants have bifurcated the suit item No.2 property into several site properties and in order to incorporate the same in the



plaint, it is sought to allow the present application. Apart from the same, it is also contended that there are two more additional properties, which are also amenable for partition amongst the plaintiff and defendants and therefore, it is also sought to permit the plaintiff to insert those properties by way of amendment. In support of his contentions, the plaintiff has produced the photo-stat copies of the katha extracts pertaining to suit item No.2 property and additional properties sought to be inserted. There is no denial by the contesting defendants regarding the bifurcation off suit item No.2 property into several parts and in consideration of the fact that the said properties are existing in the names of some of the defendants, it is necessary to permit the plaintiff to furnish better particulars with respect to suit item No.2 property as contended under this application. The additional properties which are sought to be inserted are also existing in the names of defendants No.4 and 5 respectively and whether those properties are the joint family properties are no is the subject-matter of trial. Considering the nature of suit, it is found necessary to allow the preset application in the interest of justice and equity.



8. The Hon'ble Supreme Court of India in a ruling reported in **2023(1) KCCR 1 (SC) between Life Insurance Corporation of India V/s Sanjeev Builders Pvt. Ltd.**, and another, 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 after commencement of trial and by considering the same, it would be proper to award suitable cost to the defendants. 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.III filed by the plaintiff,
under Order VI Rule 17 R/w
Sec.151 of CPC is allowed
with costs of Rs.1,000/-.

(Dictated to the Stenographer on computer, corrected, initialed and then pronounced by
me in open Court on this the 15th day of July, 2025)

Sd/-

(IRFAN)
Senior Civil Judge,
Kadur.