

KACM200008602021



**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 1<sup>st</sup> day of February – 2025

**O.S.No.293/2021**

Plaintiff: : Sri. Parameshwarappa.  
(By: MOJ, Advocate)

V/s

Defendants: : Sri. Eshwarappa & 4 others.

(Defendants No.1 to 3 by: Sri. SNG, Advocate)  
(Defendant No.4 – Exparte)  
(Defendants No.5 by: AGP)

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

Applicant/  
2<sup>nd</sup> defendant : Sri. Gangadharappa.

V/s

Opponent/  
Plaintiff : Sri. Parameshwarappa.

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 written statement</i>
iii	<i>The date on which the application is filed</i>	<i>11.12.2023.</i>
iv	<i>Number of the application</i>	<i>VII</i>
v	<i>The date on which the objections are filed by different opponent</i>	<i>20.08.2024</i>
vi	<i>The date on which the orders were passed on the said application</i>	<i>01.02.2025.</i>

When the case is posted for cross of PW-1, the 2<sup>nd</sup> defendant has filed this application.

### ORDERS ON I.A.VII

This interim application has been filed by the defendants U/O VI Rule 17 R/w Sec.151 of CPC seeking for the following application schedule amendment in their written statement.

“In the written statement at page No.4 after para No.16, to **ADD** “16(a) It is submitted that the earlier partition which was affected in 01-10-1991 and as per the said partition the khata was also mutated in their respective names as per M.R.No.10/1992-93, since nobody (including the plaintiff) were challenged the said earlier partition and the mutation of M.R.No.10/92-93, hence the

present suit itself is not maintainable and it is barred by limitation”.

2. This application is accompanied by an affidavit filed by the 2<sup>nd</sup> defendant. The gist of the application averments that the plaintiff and defendants are the children of deceased Erappa @ Verappa. During the lifetime of said Earappa, the plaintiff and defendants No.1 to 3 have partitioned on 01.10.1991 through a oral partition before panchayathdars and same is reduced into writing for their memory purpose. As per the said partition they are all enjoying their respective shares since the date of partition and katha also mutated in their names as per the MR No.10/92-93. The suit schedule item No.3 and 4 properties are purchased the 2<sup>nd</sup> defendant for valid consideration through his vendor after partition was effected and he obtained the registered sale deed and katha is also in his name. He is the absolute owner and in possession of the said properties. Since the 5<sup>th</sup> defendant has awarded the compensation amount in order to land acquisition proceedings with respect to item No.3 and 4 properties and in order to harass and grab the compensation, the plaintiff has filed this false suit. The plaintiff or anybody have not challenged the earlier

partition and also the entry of mutation. Hence, it is just and necessary to amend the written statement.

3. This application has been resisted by the plaintiff by asserting that the 2<sup>nd</sup> defendant has sworn to false affidavit by suppressing the material facts and by creating the false story. The proposed amendment is in no-way concerned to the suit on hand, there was no partition affected on 01.10.1991 and there was no mutation proceedings taken place. There was no partition taken place in the family and till this day, the plaintiff and defendants are in joint possession over the suit schedule properties and the plaintiff is entitled for legitimate share in the suit schedule properties. In order to prevent the plaintiff from getting the share in the joint family properties and to deceive and defraud the plaintiff and her legitimate share, the 2<sup>nd</sup> defendant by creating false documents has filed this application. In this case, the evidence and cross-examination of PW-1 has been completed and now the said case is posted for defendant's evidence, at this stage, such application is not maintainable and same is liable to be rejected and accordingly, sought to reject the same.

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. **Points No.1** :- The present suit is one for the relief of partition and separate possession. It is a matter of record that when the case was posted for cross-examination of PW-1, the 2<sup>nd</sup> defendant has come up with this application seeking for proposed amendment in his written statement. On reference to the plaint averments it is noticed that the plaintiff claims himself to be the joint family member along with defendants has sought for the relief of partition and separate possession claiming his 1/5th share in the suit schedule properties by specifically contending that the said properties are his ancestral and joint family properties. On reference to the written statement of 2<sup>nd</sup>

defendant, it is noticed that a specific defence is taken by contending that there has already been a oral partition which was reduced into writing as Palu-patti effected on 01.10.1991 between the joint family members and accordingly, the respective sharers are in exclusive possession of their respective shares by mutating the revenue entries. Under the present application, the 2<sup>nd</sup> defendant intends to furnish better particulars regarding the aforesaid specific defence. The proposed amendment will not change the defence set up in the written statement of 2<sup>nd</sup> defendant.

8. At this stage, it is apt refer ruling reported in 2007(4) KCCR SN 241 between Usha Bala Saheb Swamy and others V/s Kiran Appaso Swamy and others, wherein the Hon'ble Supreme court of India while considering the scope and ambit of amendment of plaint and amendment of written statement was pleased to hold as follows ;

*“A. Code of Civil Procedure, 1908 – Order 6  
Rule 17- Amendment of plaint and  
amendment of written statement-  
Difference between.*

*Held – It is equally well settled principle  
that a prayer for amendment of the plaint*

*and a prayer for amendment of the written statement stand on different footings. The general principle that amendment of pleadings cannot be allowed so as to alter materially or substitute cause of action or the nature of claim applies to amendments to plaint. It has no counterpart in the principles relating to amendment of the written statement. Therefore, addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement would not be objectionable while adding, altering or substituting a new cause of action in the plaint may be objectionable.”*

In consideration of above referred finding, while considering the application seeking for the amendment of written statement shall be liberally considered as against the amendments sought for with the plaint. On verification of written statement averments and the proposed amendment, it is crystal clear that the additional pleadings are nothing but the additional grounds of defence raised by the defendant with better particulars. Having regard to the fact that the

defendants have not conducted cross-examination of PW-1 and also that the proposed amendment would not take away the averments set out in the written statement already filed and also that the delay cause may be compensated in terms of money, the present application deserves to be allowed in the interest of justice and equity. Accordingly, the points under consideration are answered in the **Affirmative**.

9. **POINT No.2** :- In view of the findings on foregoing points, the following;

ORDER

I.A.VII filed by the 2<sup>nd</sup> defendant, under Order VI Rule 17 R/w Sec.151 of CPC is allowed subject to payment of cost of Rs.500/-.

(Dictated to the Stenographer on computer, corrected, initialed and then pronounced by me in open Court on this the 1<sup>st</sup> day of February, 2025)

*SD/-*  
(IRFAN)  
Senior Civil Judge,  
Kadur.