

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND
PRINCIPAL J.M.F.C., TARIKERE**

PRESENT : SRI VAIDYA SHREEKANT, *B.Sc, LL.B.*
*Senior Civil Judge & Prl. J.M.F.C.,
Tarikere. .*

(Name of the Presiding Judge)

DATED : THE 3rd DAY OF MAY 2025

OS No.188/2022

**ORDER ON IA-22 FILED UNDER ORDER VI RULE 17
R/W SEC.151 OF CPC**

The present application has been filed by the defendant No.2 seeking amendment of the written statement.

2. In the affidavit annexed to the application, the defendant No.2 deposed that the present suit has been filed by the plaintiff seeking relief of partition and separate possession. He already filed written statement by setting up counter claim. Inadvertently, he could not incorporate proposed item No.12 in the written statement for the bona-fide reasons. He is intending to give proper description of counter claim properties. The proposed amendment would not cause any hardship to the plaintiff etc.

3. The application is objected by the plaintiff. The main objection of the plaintiff is that the defendants herein clearly admitted in previously instituted suit in OS No.20/2014 to the effect that the suit schedule properties are ancestral and joint family properties. Hence, now the defendants cannot contend that there was already partition. At this stage, no material is placed on record to establish the oral partition in the joint family properties etc.

4. Heard on application.

5. The following points arise for consideration of this Court :

1. Whether the defendant No.2 has made out reasonable grounds to allow the proposed amendment?

2. What order ?

6. After hearing both sides and after appreciation this court answers the above points as under;

Point No.1 : In the Affirmative

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

R E A S O N S

7. **POINT No.1:** As discussed above, the defendant No.2 herein filed instant application seeking permission to get amend his written statement. By way of amendment,

he is intending to delete prayer and intends to insert two more prayers to the effect that the suit item No.1 to 4 of schedule 'A' allotted to his share and to declare that the properties shown in schedule 'B' of counter claim are his self-acquired properties.

8. As discussed above, the main objection of plaintiff is that the defendants herein clearly admitted that the suit schedule properties are ancestral and joint family properties in previously instituted suit and no sufficient material is placed by them to establish oral partition in the joint family properties.

9. Admittedly, the suit is for partition and separate possession and the relationship between the parties is not disputed. It is well settled law that at the time of considering the amendment application, it is not necessary to go in detail about the merits of the proposed amendment. The court should be liberal while considering the amendments.

10. At this juncture, I would not like rely on the Judgments of Hon'ble High Court of Karnataka reported in;

(1) *ILR 2007 KAR 2489 (Sri Ryaz Ahmed and Others Vs. Lalith Kumar Chopra)*, wherein, the Hon'ble High Court of Karnataka held that *at the time of considering prayer for amendment of the*

written statement, the court should not venture to give findings on merits - The proposed amendment of written statement making counter claim is necessary to resolve the real controversy between the parties and also to prevent multiplicity of proceedings, conflicting decisions and to save the public time and to lessen the hardship to the parties - If a cause of action has arisen subsequent to filing of written statement then the defendant is entitled to make counter claim.

(2) ILR 2008 KAR 2863 (Smt. Muniyamma and Another Vs. S. Chandrakar and Others), in the said Judgment, the Hon'ble High Court of Karnataka held that *it is well settled principle of law that the defendant in a suit has the latitude and is entitled to take inconsistent pleas. The court may, at any stage of the proceedings, allow either party to alter or amend their pleadings in such a manner and on such terms as may be just if such amendment is necessary for the purpose of determining the real question in controversy between the parties. The provision enacts that no application for amendment should be allowed after the trial has commenced, unless the court*

comes to the conclusion that in spite of due diligence, the party could not have raised the matter for which amendment is sought before the commencement of the trial.

(3) 2022 (3) KCCR 2078 (Smt. Sarojamma and Another Vs. A.Y. Anilkumar), wherein, it has been held that *the amendments, even after commencement of trial, could be allowed if the amendment is necessary for effective and complete adjudication of real controversy and the other side is not put to injustice.*

11. In the instant case, the defendant No.2 wants to delete one prayer and wants to insert declaration to the effect that the properties mentioned in schedule B of counter claim are his self-acquired properties. In the above referred Judgments, the Hon'ble High Court of Karnataka clearly held that the courts are not supposed to venture to give findings on merits of the proposed amendment. The amendment could be allowed even after commencement of trial to avoid the multiplicity of proceedings and also to avoid conflicting decisions. In the instant suit, the evidence of plaintiff is even though commenced, the cross-examination of the said witness is not concluded. The suit is in its initial stage. Hence, I am of the opinion that the application filed by the defendant No.2 deserves to be

allowed in order to decide the real controversy between the parties and also to avoid the multiplicity of proceedings. However, the delay caused in filing the application may be compensated by imposing reasonable cost on the defendant No.2. Accordingly, I answer point No.1 in Affirmative.

12. POINT NO.2: For the reasons and above discussion, I proceed to pass the following:

O R D E R

The application filed by the defendant No.2 under order VI rule 17 R/w Sec.151 of CPC at IA No.22 is hereby allowed on cost of Rs.2000/-.

The defendant No.2 is permitted to carry out amendment of the written statement as prayed in the application.

**SENIOR CIVIL JUDGE & PRL. JMFC.,
TARIKERE.**

ORDER ON IA-23 FILED UNDER ORDER VI RULE 17

R/W SEC.151 OF CPC

The present application has been filed by the defendant No.1 seeking amendment of the written statement.

2. In the affidavit annexed to the application, the defendant No.1 deposed that the present suit has been filed by the plaintiff seeking relief of partition and separate possession. He already filed written statement by setting up counter claim. One of the vehicles does not belong to joint family and it is wrongly shown in the written statement. In order to avoid ambiguity and to describe the properties properly, he filed the instant application.

3. The application is objected by the plaintiff. The main objection of the plaintiff is that the defendants herein clearly admitted in previously instituted suit in OS No.20/2014 to the effect that the suit schedule properties are ancestral and joint family properties. Hence, now the defendant No.1 cannot contend that there was already partition. At this stage, no material is placed on record to establish the oral partition in the joint family properties etc.

4. Heard on application.

5. The following points arise for consideration of this Court :

1. Whether the defendant No.1 has made out reasonable grounds to allow the proposed amendment?

2. What order ?

6. After hearing both sides and after appreciation this court answers the above points as under;

Point No.1 : In the Affirmative

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

R E A S O N S

7. **POINT No.1:** As discussed above, the defendant No.1 herein filed instant application seeking permission to get amend his written statement. By way of amendment, he is intending to delete one vehicle and to delete entire prayer in respect of schedule 'A' and 'B' properties. He intends to get insert the prayer to the effect that suit item No.1 to 6 of counter claim allotted to his share in the partition took place orally. The item No.7 to 10 are his self-acquired properties. He wants to mention the properties with specific boundaries.

8. As discussed above, the main objection of plaintiff is that the defendants herein clearly admitted that the suit

schedule properties are ancestral and joint family properties in previously instituted suit and no sufficient material is placed by them to establish oral partition in the joint family properties.

9. Admittedly, the suit is for partition and separate possession and the relationship between the parties is not disputed. It is well settled law that at the time of considering the amendment application, it is not necessary to go in detail about the merits of the proposed amendment. The court should be liberal while considering the amendments.

10. At this juncture, I would not like rely on the Judgments of Hon'ble High Court of Karnataka reported in;

(1) *ILR 2007 KAR 2489 (Sri Ryaz Ahmed and Others Vs. Lalith Kumar Chopra)*, wherein, the Hon'ble High Court of Karnataka held that *at the time of considering prayer for amendment of the written statement, the court should not venture to give findings on merits - The proposed amendment of written statement making counter claim is necessary to resolve the real controversy between the parties and also to prevent multiplicity of proceedings, conflicting decisions and to save the public time and to lessen the*

hardship to the parties - If a cause of action has arisen subsequent to filing of written statement then the defendant is entitled to make counter claim.

(2) ILR 2008 KAR 2863 (Smt. Muniyamma and Another Vs. S. Chandrakar and Others), in the said Judgment, the Hon'ble High Court of Karnataka held that *it is well settled principle of law that the defendant in a suit has the latitude and is entitled to take inconsistent pleas. The court may, at any stage of the proceedings, allow either party to alter or amend their pleadings in such a manner and on such terms as may be just if such amendment is necessary for the purpose of determining the real question in controversy between the parties. The provision enacts that no application for amendment should be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter for which amendment is sought before the commencement of the trial.*

(3) 2022 (3) KCCR 2078 (Smt. Sarojamma and Another Vs. A.Y. Anilkumar), wherein, it has been held that *the amendments, even after*

commencement of trial, could be allowed if the amendment is necessary for effective and complete adjudication of real controversy and the other side is not put to injustice.

11. In the instant case, the defendant No.1 wants to delete one prayer and wants to insert new prayer and to describe the properties with specific boundaries with reference to their position in the plaint schedule. In the above referred Judgments, the Hon'ble High Court of Karnataka clearly held that the courts are not supposed to venture to give findings on merits of the proposed amendment. The amendment could be allowed even after commencement of trial to avoid the multiplicity of proceedings and also to avoid conflicting decisions. In the instant suit, the evidence of plaintiff is even though commenced, the cross-examination of the said witness is not concluded. The suit is in its initial stage. Hence, I am of the opinion that the application filed by the defendant No.1 deserves to be allowed in order to decide the real controversy between the parties and also to avoid the multiplicity of proceedings. However, the delay caused in filing the application may be compensated by imposing reasonable cost on the defendant No.1. **Accordingly, I answer point No.1 in Affirmative.**

12. POINT NO.2: For the reasons and above discussion,
I proceed to pass the following:

O R D E R

The application filed by the defendant No.1 under order VI rule 17 R/w Sec.151 of CPC at IA No.23 is hereby allowed on cost of Rs.2000/-.

The defendant No.1 is permitted to carry out amendment of the written statement as prayed in the application.

To carry out amendment and to furnish amended written statements.

Call on:19.07.2025.

SD/-
SENIOR CIVIL JUDGE & PRL. JMFC.,
TARIKERE.