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IN THE COURT OF CIVIL JUDGE AND ADDL. J.M.F.C, TARIKERE

**PRESENT: Sri. Rahul Shettigar, B.Com (Hons.), LL.B
Civil Judge & Addl. J.M.F.C, Tarikere**

Dated this the 2nd day of JUNE, 2025

ORIGINAL SUIT No. 65/2016

BETWEEN:

Smt. M.B. Radha @ M.B. **PLAINTIFF**
Rajamma

-AND-

Sri. B. Shankarappa and others **DEFENDANTS**

IN I.A.NO.XXII

Smt. M.B. Radha @ M.B. **APPLICANT/ PLAINTIFF**
Rajamma

-AND-

Sri. B. Shankarappa and others **OPPONENTS/
DEFENDANTS**

PARTICULARS

<i>i</i>	<i>Provision under which the application is filed</i>	<i>Order VI Rule 16 & 17 R/w S.151 CPC</i>
<i>ii</i>	<i>Relief sought for</i>	<i>Amendment of plaint</i>
<i>iii</i>	<i>The date on which the application is filed</i>	<i>12.03.2024</i>
<i>Iv</i>	<i>Number of the application</i>	<i>I.A.No.XXII</i>
<i>V</i>	<i>The date on which the objections are filed by different opponents</i>	<i>07.02.2025</i>
<i>vi</i>	<i>The date on which the orders were passed on the said application</i>	<i>02.06.2025</i>

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ORDERS ON I.A. NO. XXII

1. Applicant/ Plaintiff has filed the instant application under Order VI Rule 6 & 17 r/w Section 151 of C.P.C seeking amendment of the plaint to the effect made in the application.
2. In the affidavit appended to the application, it is contended that the amendment now sought pertains to the addition of some joint family properties that were left out when the suit was filed. Incorporating such an amendment is necessary given the facts of the case. The proposed amendment does not change the nature of the suit or its cause of action. If the application is rejected, the Plaintiff would suffer serious loss and hardship. With these contentions, the prayer is to allow the application.
3. Resisting the application, the Opponents/Defendants have filed their objections, contending that the application is not maintainable in law or on facts. The properties now sought to be included are self-acquired properties of the Defendants. The application is highly belated and cannot be considered at this stage. With these contentions, the prayer is to dismiss

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the application. The rest of the Defendants have not filed any objections to the above application.

4. Heard both sides.
5. Having heard the rival contentions and on perusal of the materials, the points that would now arise for my consideration are as under -

Point No.1 : Whether the amendment is necessary to determine the real questions in controversy between the parties?

Point No.2 : Whether the Plaintiff shows that despite due diligence, she could not have raised the matter before the commencement of trial?

Point No.3 : What Order?

6. Now, my findings to above points is as follows -

Point No.1 : In the Affirmative

Point No.2 : In the Affirmative

Point No.3 : As per the final order, for the following -

REASONS

7. **Point No.1:** The instant suit is filed mainly seeking relief of partition and separate possession with such other ancillary reliefs that would flow from the main relief. The suit is now at the stage of arguments. At this stage, the Applicant/ Plaintiff

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has come with the instant application seeking amendment of her plaint. It would now be significant to reproduce the proposed amendment –

1) *At page No.3 after para No.4 the following paragraph kindly be inserted as para No.4(a)*

4(a) It is submitted that, the defendant No.6 is the wife of defendant No.2. The Sy.No.13/3 measuring 2-07 guntas (with kharab 0-01 guntas), situated at Mundre village, Amruthapura Hobli, Tarikere Taluk purchased in her name and the defendant No.7 is the wife of defendant No.3 and the Sy.No.41/1A1, measuring 3-02 acres (with kharab 0-02 guntas), situated at Haliyuru village, Kasaba Hobli, Tarikere Taluk was purchased in her name and property No.807 (site No.23) site measuring 30 x 45 ft situated at Bapuji Colony, Tarikere Town is purchased in the name of 1st defendant is also joint family property, 1st defendant sold 15 x 45 ft to T.G. Manjunatha and then he sold the said property to defendant No.9 i.e., Premalatha @ Prema W/o T.R.Lakshmana and 1st defendant sold the remaining extent of 15 x 45 ft to the defendant No.8 i.e, T.R.Lakshman S/o late Rangappa. It is submitted that, 1st defendant Shankarappa has purchased the property bearing Asst old No.3460/807, New No.861 (Site No. 23) measuring 30 x 45 feet situated at Bapuji Nagara Tarikere. Likewise first defendant is having Site No A-318 in Swamy Vivekananda Extension of Shivamogga approved by SUDA- Shivamogga Urban Development Authority in Gadikoppa village. First defendant is also having property bearing No. 1432/1316/1036/600/1 of BBMi Bengaluru in the name of Smt. Dakshayani. Now she dead and khatha mutated in the name of her husband i.e, 1st defendant. These properties are purchased from the joint family fund and are joint family properties of the plaintiffs and defendants No.1 to 5.

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2) At page No.5 after schedule item No.7, the following schedule properties kindly be inserted.

8) The vacant site situated at Bapuji Colony, Tarikere Town, Tarikere Taluk, bearing Old Asst.No.3460/807, New No.83, (Site No.23) totally measuring Tarikere Taluk bearing, 30 * 45 ft bounded on:-

East by : Site No.22
West by : Site No.24
North by : Road
South by : Road

9) The vacant site situated at Swamy Vivekandana Extension, Gadikoppa, Vinobhanagara, Shivamogga Town, bearing property No.7997, site No.318, A Block, totally measuring 3652.65 Sq ft bounded on:-

East by : Public property
West by : 900 meter width road
North by : Public property
South by : Site No.A-316, 317

10) RCC House, situated at Bilekahalli, BBMP, Bangalore bearing property No. 1432/1316/1036/600/1, totally measuring 30 x 40 ft bounded on:-

East by : House of Subramanya
West by : House of Muniyappa
North by : House of Narayana Ithal
South by : Road

11) The Land bearing Sy.No.13/3 measuring 2-07 guntas (with kharab 0-01 guntas), Assessed at Rs.2.61 paise, situated at Mundre village, Amruthapura Hobli, Tarikere Taluk bounded on:-

East by : Property of Mallamma
West by : Property of Gururaju

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North by : Property of Kallemane Ningappa
South by : Property of M.H.Kalleshappa

12) The Land bearing Sy.No.41/1A1, measuring 3-02 acres (with kharab 0-02 guntas), Assesed at Rs.3.92 paise, situated at Haliyuru village, Kasaba Hobli, Tarikere Taluk bounded on:-

East by : Property of Kamalamma
West by : Property of Vasanna
North by : Property of Shivashankar
South by : Property of Ranganna

13) RCC shop situated at Tarikere Town, Market Yard bearing property No.IDSMT Shop No.15, measuring 3.65 x 6.25 meter, Tarikere Taluk bounded on:-

East by : Public bus stop
West by : Shop No.18
North by : Shop No.14
South by : Shop No.16

14) New Myassy Furguson 1035-DL tractor and trailer bearing Reg.No.KA.18/4915 and 4916.

8. Before advertng to the factual matrix any further, it would be beneficial to first have a conceptual understanding of the law relating to amendment of pleadings. Order VI Rule 17 of C.P.C governs aspect relating to amendment of pleadings and the following judgement of the Hon'ble Supreme Court of India beautifully encapsulates the scope and ambit of the law relating to amendment of pleadings. In **LIFE INSURANCE CORPORATION OF INDIA V. SANJEEV BUILDERS**

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PRIVATE LIMITED AND ANOTHER reported in **2022 SCC**

OnLine SC 1128, the Hon'ble Supreme Court of India has held at Para No.70 as under -

Our final conclusions may be summed up thus:

(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.

(ii) 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 VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) 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 admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

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(iv) 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 amendment is malafide, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would 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) Where 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.

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(x) Where 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. (See *Vijay Gupta v. Gagninder Kr. Gandhi*, [2022 SCC OnLine Del 1897](#))*

9. Keeping in mind the guidelines issued by the Hon'ble Supreme Court of India in LIFE INSURANCE CORPORATION OF INDIA V. SANJEEV BUILDERS PRIVATE LIMITED AND ANOTHER (Supra) and the very provision of law, it would now be appropriate to

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delve into the essential facts of the case only to the extent necessary for disposal of this application.

10. To elaborate on the proposed amendment now sought to be made to the existing plaint, it is evident that the Applicant/Plaintiff intends to include certain alleged joint family properties that were left out when the suit was instituted. Given that the suit is one for partition and separate possession, allowing such an amendment would serve the purpose of bringing an end to the litigation, rather than giving scope for multiplicity of proceedings. A careful reading of the amendment now being sought would show that it neither changes the nature of the suit nor its cause of action.
11. Amendment of pleadings should generally be permitted where it would result in solution of real controversy between parties, without altering the cause of action. It is settled law that amendment cannot be claimed as a matter of right under all circumstances, but Court ought not to adopt hyper technical approach while deciding such prayers. In other words, Court should be liberal particularly where any prejudice suffered by the other side can be compensated by costs. Applying these

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principles, it is found that the proposed amendment is necessary to determine the real questions in controversy between the parties. Accordingly, the Point No.1 which has arisen for my consideration is answered in the ***Affirmative.***

12. **Point No.2:** Having already answered Point No.1 in favour of the Plaintiffs, it is now necessary to examine if the amendment, with all due diligence, could not be sought before the commencement of the trial.
13. The reason now ventilated to explain the delay in seeking for the amendment is that such pleadings were left out while preparing the plaint due to lack of knowledge regarding the entire facts. The said reason assigned given the nature of the amendment sought, is found acceptable.
14. There is of course some delay in preferring the application seeking amendment but such delay though found to be inordinate, is not one which shocks the conscience of the Court so as to reject the prayer for amendment of the plaint. Hence, the delay is decided to be met with appropriate costs and accordingly, Point No.2 which has arisen for my consideration is answered in the ***Affirmative.***

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15. **Point No.2:** For the foregoing reasons, the following -

ORDER

I.A No.XXII filed by the Applicant/ Plaintiff under Order VI Rules 6 & 17 r/w Section 151 of C.P.C is hereby allowed on cost of Rs.500/-.

Resultantly, Applicant/ Plaintiff is permitted to carry out the amendment and furnish amendment plaint both in respect of order passed on I.A.No.XXII and XXIII within the next hearing date.

(Typed, computerized and corrected by me and then pronounced in the Open Court, on this the 2nd DAY OF JUNE, 2025)

**sd/-
(Rahul Shettigar)
Civil Judge & Addl. J.M.F.C,
Tarikere.**