

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

YELANDUR

DATED 27th DAY OF JANUARY 2021

PRESENT

**SRI. SHARATH CHANDRA.N [B.A.L., LLB.]
CIVIL JUDGE AND J.M.F.C.,
YELANDUR**

O.S. No.88/2015

Plaintiff/s : H.P.Rajeshwari & Others

(By Sri.KSCP. Advocate)

V/s

Defendant/s : Mahadevaswamy & Others

(D1-By Sri.SRA. Advocate)

(D2 & 3- Sri.MR. Advocate)

ORDER ON I.A.No.XI

**Applicant/
Defendant** : Mahadevaswamy

V/s

**Opponent/
Plaintiff** : H.P.Rajeshwari & Others

ORDER ON IA.No.XI

The defendant No.1 has filed this application under Order 6 rule 17 R/w 151 of CPC seeking amendment in the written statement.

The plaintiff No.3 has filed written statement of objection and has sought for dismissal of the application.

The contention of the defendant No.1 in brief:-

2. The defendant No.1 contends that the plaintiffs have filed this suit seeking partition and separate possession of the suit schedule property. The plaintiffs are claiming partition in the property of their mother which they were supposed to receive in a partition.

3. The defendant No.1 contends that during the lifetime of his father, Smt.Parvathamma has received share from Sri.Parvathappa and has been transacting separately. However the defendant No.1 could not place this fact about earlier partition in the written statement clearly. Hence, the defendant No.1 has come up with this application seeking amendment in the written statement wherein he intends to place this fact about the equal partition on record. The defendant No.1 contends that if this application is allowed no

harm and injustice will be cause to plaintiff. Accordingly, seeks for allowing this application.

4. The plaintiff No.3 has filed the statement of objections to this application and contends that this application is not maintainable either on law or on facts and it is liable to be dismissed. Further contends that the defendant No.1 has filed false affidavit and has not explained the reason for not inserting this fact earlier i.e., at the time of filing written statement. Further contends that this application is highly belated. Accordingly seeks for its dismissal.

5. I have heard both the counsels and I have examined the pleadings and record. The question that arises for my consideration is:-

“Whether the defendant No.1 has made out sufficient grounds to allow this amendment in the written statement at this stage”?

I answer this question in the Negative, for the following:-

REASONS

6. This case is filed in the year 2015. To the plaint the defendant No.1 has filed written statement on 28.10.2015. On 13.07.2017 issues are framed by this Court. The plaintiff has commenced his evidence and his stage of plaintiff evidence is closed. The case was set down for the evidence of defendant No.1. At this stage defendant No.1 has come up with this application.

7. It may be necessary to understand the proviso appended to under Order 6 Rule 17 of CPC. The summary of Order 6 Rule 17 is that the Court may at any stage allow any of the parties to alter or amend his pleadings for the purpose of determining the oral questions in contra very between them. However this provision comes with a proviso wherein it creates a bar that no amendment shall be allowed after the trial has commenced unless the Court comes to conclusion that inspite of due diligence the party could not have raised the matter before the commencement of trial. Now here, the commencement of trial refers settling of issues by this Court. Once issues are framed it is understood that trial has

commenced. As already stated above issues are framed on 13.07.2017. Hence after commencing of the trial amendment could not be allowed however if the party shows that inspite of due diligence he could not have sought amendment.

8. Now the defendant No.1 is seeking an amendment in the written statement wherein he wants to plead about the prior partition. The alleged fact of prior partition certainly would be within the knowledge of the defendant No.1. He is a family member. It is not his case that he is a stranger and very recently he came to know about this fact. It is apparent from the written statement that nowhere he has averred about prior partition. Only after closure of plaintiff's evidence he has come up with this application.

9. As rightly pointed out by the plaintiff the defendant No.1 has not explained as to why he could not plead this fact at the time of filing the written statement. He has not given a bonafide reason as to what prevented him from seeking such amendment at the time of filing of written statement.

10. The defendant No.1 has not made out any grounds of due diligence that he has taken to seek this amendment. It appears that the defendant No.1 pleads this fact in his application in order to overcome his lacunas. Nevertheless, this aspect is a matter of trial.

11. This amendment is belated and does not show bonafide intention of defendant No.1. The defendant No.1 has failed to make out grounds to seek amendment at this stage. Application is devoid of merits and deserves to be dismissed. Accordingly, I answer this question framed in the Negative and I proceed to pass the following:-

ORDER

I.A.No.XI filed by defendant No.1 is
dismissed.

**(SHARATH CHANDRA.N.)
Civil Judge and J.M.F.C.,
Yelandur.**

TR