

**ORDER ON I.A. No.I FILED BY THE DEFENDANT
NO.5 UNDER ORDER VI RULE 17 R/W SECTION
151 OF CPC.**

The I.A. No. I has been filed by the defendant No. 5 under Order VI Rule 17 R/w Section 151 of CPC seeking permission to amend the written statement as prayed for in the application.

2. In support of this application, the defendant No. 5 has sworn to an affidavit, wherein he has stated that, he has purchased only 01 acre of land in Sy. No. 38/4 out of total extent of 01 acre 07 guntas from the defendant No. 1 to 4. But due to clerical error at the time of drafting written statement total extent of land was mentioned instead of only 01 acre and hence, it is just and necessary to permit him to carryout the proposed amendment as prayed in the instant application. Further stated that if the application is not allowed he will be put to irreparable loss and injury and on the other hand no harm or injury will be caused to the plaintiff if the application is allowed. **Hence, he prayed to allow the application.**

3. On the other hand, the plaintiffs have filed objections to this application and denied all the affidavit contents. In the statement of objections it is contended that the application is not maintainable either in law or on the facts and hence, it is liable to be dismissed in limine. The application is liable to dismissed on the grounds that all the points raised by the respondent in the interlocutory application are merely fabricated for the purpose of filing of this application and are

tenable in law. The affidavit filed by the defendants along with the application is filed without any showing of reasons in relation to the order for amendment of the defence, etc. **With these contentions the plaintiff prays to rejection of this application.**

4. Heard the arguments on present application by the learned counsels appearing for the defendants and plaintiff. Perused the material available on records.

5. Now the following points arise for consideration of this Court are as hereunder:

Point No.1: Whether the defendant No. 5 has made out grounds for allowing the application and thereby permitting him to carry out the proposed amendment in the written statement as sought for?

Point No.2 : What Order?

6. Upon hearing of arguments by learned counsels appearing for the defendants and plaintiff and on perusal of pleadings averments, application, affidavit, statement of objections and list of documents, the Court answers to the above said points are as hereunder:

Point No. 1 : In the Affirmative.

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

REASONS

7. Point No. 1: Admittedly, this suit is filed by the Plaintiff against the Defendants for seeking the relief of partition and separate possession and such other reliefs.

8. On perusal of the entire records it appears to the Court that the plaintiffs have sought the relief of partition and separate possession and when the above suit is set down for defendant evidence, the defendant No. 5 has filed the present amendment application seeking permission to amend the written statement as sought in the application.

9. On contrary learned Counsel for the plaintiff filed objections and contended that the reasons assigned by the defendant No. 5 in the affidavit cannot be accepted and the defendant No. 5 is introducing new facts by way of proposed amendment and the same is not permissible. Hence application filed by the defendant No. 5 has not maintainable and it is liable to be rejected.

10. That the defendant No. 5 can amend his pleading by insertion or deletion subject to provision of law. If the defendant No. 5 wants to amend his pleadings by inserting additional paras as sought in the application, then the burden is lies upon the defendant No. 5 to prove the same. It is the burden of the defendant No. 5 to establish all those aspects of proposed amendment and if the proposed amendment is allowed, no hardship will be caused to the plaintiff.

11. Further on perusal of the proposed amendment it appears to the Court that the proposed amendment will not change the nature of suit and it is also necessary for the purpose of determining the reals questions in controversy between the parties. However, the plaintiff will get ample opportunity to cross examine the defendant No. 5 on that aspect.

12. As per the proviso of Order 6 Rule 17 of CPC, after commencement of trial the amendment application will not be entertained. But the present case is set down for defendant evidence, the present application is came to be filed and in order to adjudicate the dispute between the

parties completely, inherent powers are vested with this Court to allow the amendment application.

13. In various cases the Hon'ble High Court of Karnataka held that while deciding the amendment applications trial courts cannot stick on too technical while allowing application. In this regard this Court has relied upon the ratio laid down in the **Hon'ble High Court of Karnataka in Writ Petition No.104485/2014 in between Siddappa dead by his LRs Vs. Tangewwa Nagappa Hosur and others**, wherein the Hon'ble High Court has held that the Court should not be too technical while allowing the amendment application. Further held that ultimately the justice to be done to the parties to avoid further litigation.

14. This Court has carefully perused the ratio laid down in the above said case and applied to the case on hand. This court is of the opinion that in order to proper adjudication of the dispute between the parties and to avoid multiplicity of proceedings, the said application has to be allowed. With these observations, this Court has answered Point No.1 in the Affirmative.

15. Point No.2: For the aforesaid discussion on Point No.1, this Court proceeds to pass the following:

ORDER

The I.A.No.I filed by the defendant No.5 under Order VI Rule 17 R/w Section 151 of Code of Civil Procedure is hereby allowed.

No order as to cost.

The defendant No.5 is permitted to carry out the amendment as prayed for in application and furnish the amended written statement.

For amendment and amended written statement by 03.07.2026.

**I Addl. Civil Judge and J.M.F.C.
Channagiri.**