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**IN THE COURT OF THE SENIOR CIVIL JUDGE AND
JMFC, HARIHAR**

PRESENT: Smt. Padmashri A. Munnoli,
B.A.L, LL.B.
SENIOR CIVIL JUDGE AND JMFC,
HARIHAR

Dated this the 20th day of July, 2024

O.S. No. 102/2018

Plaintiff / s : Sri. H.U. Chandrashekar and
others

:: VERSUS ::

Defendant / s : Sri. H. Malleshappa and others

Parties in IA No. XVII

Applicant / : Sri. H. Vinod Kumar.
defendant No.2

:: VERSUS ::

Opponent / : Sri. H.U. Chandrashekar and
Plaintiffs Others

ORDER ON I.A.NO. XVII FILED BY DEFENDANT NO.2
UNDER ORDER 6 RULE 17 R/W SEC. 151 OF C.P.C.

The present application is filed by the defendant No.2, to
amend the written statement at para No.14 and add that himself

and his wife were working and that wife of defendant No.2 also contributed for purchase of item No.4 property.

2. In the affidavit sworn to in support of the application, defendant No.2 states that, the plaintiffs have instituted the present suit for the relief of partition and separate possession. That they are claiming share even in respect of his self acquired properties. That at the time of filing of his written statement, he did not intimate about the contribution made by his wife for purchase of item No.4 property. That he was married in the year 1984 and that wife of defendant No.2 is also a graduate and was working as a teacher at BEA High School of Bapuji Education Institution. That even she contributed for purchase of item No.4 property in the year 1986. That said property is the self acquired property and same was purchased with the assistance of his wife and as such, it is prayed that he be permitted to amend the written statement as proposed in the application.

3. The plaintiffs have filed their statement of objection to IA No. 17. It is contended that the application at this stage is not maintainable. Already the evidence on the side of plaintiffs has commenced. Now the suit is posted for cross examination of PW.1. Therefore, when the trial has already commenced the application is

not maintainable. Hence, it is prayed that the application be dismissed.

4. Heard, perused the material on record.

5. The points that arise for consideration of this court are as follows:

1. Whether the defendants can be permitted to amend the written statement as prayed in the application?
2. Whether the proposed amendment will not change the nature of the suit?
3. Whether IA No. XVII deserves to be allowed?
4. To what order?

6. The findings of this court on the above points are as follows:

- Point No.1. In the Affirmative,
Point No.2. In the Affirmative,
Point No.3. In the Affirmative,
Point No.4. As per final order
for the following:

: R E A S O N S :

7. Point No.1 to 3:- The present application is filed by the defendant No.2 to amend the written statement and it is proposed to add in the written statement that item No.4 property was purchased with the contribution made by wife of defendant No.2, who was also employed and as such, is a self acquired property.

8. learned counsel for defendant No.2 would argue that the proposed amendment will not change the nature of the suit and that only an explanation is added about acquisition of this property and hence, it was prayed that application be allowed.

9. Learned counsel for the plaintiff would argue that the proposed amendment is at a belated stage. The evidence on the side of plaintiff has already commenced and at this stage the application is not maintainable. Hence, it was prayed that the same be dismissed.

10. Perusal of the material on record disclose that suit of the plaintiffs against defendants No.1 to 7 is one for partition and separate possession in respect of 5 agricultural lands and the house property. One H. Ujjappa is shown as the propositous. Plaintiff No.3 is the wife of Ujjappa. Plaintiff No.1 and 2 and defendant No.1 and 2 are the children of Ujjappa and plaintiff No.3. That Ujjappa acquired some of the suit properties in a partition

between himself and his brothers. Therefore, the suit properties are ancestral joint family properties. That Ujjappa was working in Mysore Kirlosker Company. He was also running a small scale industry after retirement out of the said income some of the suit properties were acquired. That plaintiff No.1 out of his own income has constructed a house in item No.5 property and the other plaintiffs and defendants No.1 and 2 have no right to claim the share in the improvements made by plaintiff No.1.

11. That one B.G. Mahesh was a friend of Ujjappa. Wife of said B.G. Mahesh by name Neelamma and Ujjappa purchased survey No.89/P measuring 1 acre 13 gunta of Amaravathi village, Harihar in the name of defendant No.2 and in the name of Neelamma for a total consideration of Rs.47,755/- on 29.05.1986. That the consideration amount was paid by Ujjappa and Neelamma equally. The said contribution by Ujjappa was out of the income from the ancestral and joint family properties. That name of defendant No.2 along with names of defendants No.3 to 5 who are the legal heirs of Neelamma is entered to this property. That item No.4 property is a joint family property to an extent of $\frac{1}{2}$ share. Therefore, the suit properties are claimed to be ancestral joint family properties.

12. Defendant No.2 in the written statement filed denied the plaint averments. It is contended that except item No.1 and 4 properties, the remaining properties are ancestral joint family properties of plaintiffs and defendants No.1 and 2. Defendant No.2 specifically contends at para 14 of his written statement that he is an mechanical engineer and after completion of his education he joined Mysore Kirlosker company in the year 1983 as a Section Manager and was drawing a salary of Rs.2,174/- per month with D.A. and as such, he had sufficient income in the year 1986 while working as a Section Manager. That out of his individual income he purchased item No.4 property with one B.K. Neelamma on 29.05.1986 for a total sum of Rs.47,775/-. That he was in joint possession of this item No.4 property with Neelamma. That there was no contribution made by Ujjappa for purchase of item No.4 property. Therefore, plaintiffs have no right in this land. That he had sufficient income to make the purchase. Therefore, it is his self acquired property.

13. Defendant No.4 the daughter of said B.K. Neelamma in the written statement filed has contended that the purchase made by her mother Neelamma was with Ujjappa and Ujjappa contributed for the purchase and that there mother was having half share in this Sy.No. 89/1 of Amaravathi village of Harihar.

14. Now defendant No.2 has filed this application, when the matter was posted for cross examination of PW.1, to amend his written statement and add that the purchase was made by him with the help of his wife who was working as a teacher. That item No.4 was purchased with the assistance of his wife and as such, it is his self acquired property. The defendant No.2 already in his written statement at Para No.14 had stated that he was a mechanical engineer and working as a Section Manager at Mysore Kirlosker company. At para No.15 of the written statement it is stated that there was no contribution made by Ujjappa for purchase of this property and that same is self acquired property of defendant No.2 and that he had sufficient income to make the purchase. Therefore, already there is a specific defense by defendant No.2 about how this property was acquired. Whether item No.4 property is a self acquired property of defendant No.2 or is a joint family property has to be decided only after trial. The proposed amendment is to the effect that even his wife contributed for the purchase. Therefore, the proposed amendment in my opinion will not take away any admission made in the written statement nor it will change the nature of a defense taken up by defendant No.2. Therefore, though the amendment application is filed at a belated stage that when it will not change the nature of the suit, in my opinion the same can be allowed to decide all the

controversies between the parties. Therefore, the application deserves to be allowed. Accordingly, for these reasons I answer **Point No.1 to 3 in the Affirmative.**

15. Point No.4:-For the reasons stated above, I proceed to pass the following.....

:ORDER:

IA No. XVII filed by the defendant No.2 U/o 6 Rule 17 R/w Sec.151 of CPC, is hereby allowed on costs of Rs.400/- payable to plaintiffs.

Defendant No.2 is permitted to amend the written statement as prayed in IA No. XVII.

(Dictated to the Stenographer directly on computer, typed by him corrected by me and then pronounced in the open court on this the 20th day of July, 2024)

(Smt. Padmashri A. Munnoli)
Senior Civil Judge & JMFC,
Harihar