

IN THE COURT OF THE I ADDITIONAL SENIOR CIVIL JUDGE &
J.M.F.C., HUBBALLI

Present:

SMT. SARVAMANGALA K.M.,
B.A. LL.B.,
I Additional Senior Civil Judge and JMFC.,
Hubballi.

O.S. No.180/2023

Dated this the 24th day of July, 2025

Plaintiff : Shri. Arun S/o Veeranna Mulamuttal.

.Vs.

*Defendant : Sri. Veeranna S/o Shivappa Mulamuttal
and others.*

PARTIES TO I.A. NO.XIII

Applicant/s : *Sri. Mahadevappa S/o Gurusiddappa
Agali.*

.Vs.

Opponent/s : *Shri. Arun S/o Veeranna Mulamuttal.*

- i. Provision under which : Under Order 6 Rule 17 R/w Sec.151 of
application is filed CPC.*
- ii. Relief sought for : For amendment of plaint.*
- iii. The date on which : 12.06.2025
application is filed*
- iv. Number of the : XIII
application*

- v. The date on which : 04.07.2025 (by plaintiff)
objections are filed by
different opponents
- vi. The date on which : 24.07.2025
orders were passed on
the said application

ORDERS ON IA No.XIII

This order arises out of interlocutory application No.XIII filed by the applicant/defendant No.3 under Order VI Rule 17 R/w Sec.151 of Civil Procedure Code for amendment of written statement.

2.The brief facts of the affidavit annexed to application is that, the suit schedule property purchased by defendant No.3 for the commercial purpose but, same was not mentioned it in his written statement due to oversight. Hence, hence this application and prayed to allow the application.

3. The plaintiff has resisted the application by contending that the plaintiff has filed suit for partition and possession of his 1/3rd share in suit property inherited by family from ancestors. That examination in chief of plaintiff along with exhibiting Ex.P.1 to P.10 and cross examination of plaintiff by all defendant No.1 to 3 is completed. The defendant No.1 and 2 have filed their written statement and their evidence through examination in chief affidavit and have exhibited D.1 to D.8 documents and cross examined by plaintiff and defendant No.1 and 2 each other. The written statement is filed by the defendant No.3 on 09.08.2023 and defendant No.3 has filed

his examination in chief and has exhibited D.9 to D.26 documents through his evidence. Now, the stage is for further chief of defendant No.3 and this application is filed just to drag the proceedings of the suit and harass the plaintiff with one or other false reasons and gain illegally in the share of plaintiff.

4. It is further contended that the proposed amendment stated that said building is commercial building and activities are commercial in nature and hence, suit is not maintainable clearly shows the intention of defendant No.3 to drag the suit and deprive the right of plaintiff by filing application after application. The application filed for raising proposed issue without the allegation in his written statement was dismissed on merits and said defendant No.3 filed writ petition before Hon'ble High Court of Dharwad and tried to obtain stay order. But, Hon'ble High Court has ordered for emergent notice and declined to issue stay order. The said proposed amendment pertains to known fact before filing of written statement by defendant No.3 and defendant No.3 has filed his evidence and marked 18 documents on his behalf and instead of closing his further evidence and standing for cross examination he is trying to drag the suit with false and vexatious applications.

5. It is further contended that the provision of amendment is very clear that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before commencement of trial. The proposed amendment is regarding suit schedule property is

commercial building and having commercial activities in nature is very well known fact before filing of his written statement and such fact is not a fact which has been come into existence after trial. The defendant No.3 has not submitted sufficient reasons for claiming such amendment and said proposed amendment is not a subsequent incident and hence, application of defendant No.3 for proposed amendment be dismissed with heavy costs.

6. I have heard the arguments canvassed by learned counsel for the parties.

7. The following points are for my consideration.

- Point No.1: Whether the defendant No.3 have made out sufficient grounds to allow the application?*
- Point No.2: What order?*

8. My findings to the above points are as under.

- Point No.1: In the Negative.*
- Point No.2: As per final order, for the following;*

REASONS

*9. **Point No.1:** This is the suit of the plaintiff for the relief of partition and separate possession and consequential relief of permanent injunction in respect of the suit schedule property against the defendants. When the matter is set down for further chief of D.W.3 the counsel for defendant No.3 filed the present application seeking the proposed amendment in his*

written statement. Admittedly, matter is in the stage of evidence of defendant No.3. In such circumstances, the present application filed for seeking proposed amendment be permitted to insert para No.31(a) of his written statement that the suit schedule property is the commercial building and the activities are commercial in nature. Hence the suit is not maintainable before this Court. When the suit has reached the final phase of evidence the defendant No.3 raise an objection regarding jurisdiction of the Court. On the other hand, the plaintiff has opposed the application on the ground of delay and prejudice. On perusal of the materials and the arguments canvassed by both side it is notice to the Court that the issue of the jurisdiction was within the knowledge of the defendant from the beginning, now the suit is at the fag end of trial, no explanation is provided as to why the said issue was not raised earlier, or why it could not have been raised by due diligence prior to commencement of trial is not explained. Hence, when the suit is at the fag end of trial and permitting the amendment at this stage really would cause prejudice and delay the proceedings. In this regard Hon'ble Supreme Court in Vidyabai Vs. Padmalatha (2009) 2 SCC 409 and Revajeetu Builders case reported in (2009) 10 SCC 84 has held that amendments at the advanced stage of trial should not be permitted without clear justification. Moreover, the defendant No.3 was aware of the jurisdiction issue much earlier but failed to raise it, in this regard I would like to mention legal position Order 6 Rule 17 of CPC clause proviso inserted by the CPC amendment 2002 "no application for amendment shall be

allowed after the trial has commenced unless the Court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of trial.” The defendant could have raised the jurisdiction issue earlier but delayed without sufficient cause. Hence, said amendment cannot be allowed at the belated stage unless there is a clear explanation and it is necessary for determining the real question in controversy. The defendant No.3 must explain why the issue was not raised earlier. Moreover the amendment affecting jurisdiction and maintainability of suit must be raised at the earliest. Delayed amendment during evidence stage is abuse of process. On perusal of the affidavit of the defendant there is no explanation regarding the delay amendment. Simply stated due to oversight they have not raised the such question in his written statement, it is not sufficient in order to explain due diligence.

10. Further the counsel for defendant relied upon a decision of our Hon’ble High Court of Karnataka at Bangalore in CRP No.426/2023 (IPR) dated:07.06.2024. On perusal of the said decision the facts and circumstances of the present case on hand as well as the above said decision is different in nature. Hence, not applicable to this application. Therefore, this Court is of the opinion that the defendant No.3 has not established his due diligence in order to allow the proposed amendment. Hence, I answer **point No.1 in the Negative.**

11. **Point No.2:** I proceed to pass the following;

ORDER

*I.A. No.XIII filed by the defendant No.3 Under
Order VI Rule 17 R/w Sec.151 of Civil Procedure
Code is hereby dismissed.*

*(Dictated to the Stenographer directly on computer, script corrected and then
pronounced by me in the Open Court on this the **24th day of July, 2025**)*

sd/-

*(Smt. Sarvamangala K.M.)
I Addl. Senior Civil Judge and JMFC.,
Hubballi.*