

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.147/2024

Dated this the 20th day of January, 2026

Plaintiff : Smt. Gangavva W/o Gadigeppa Akki.

.Vs.

*Defendant : Smt. Iramma W/o Danappa Naykar and
others.*

PARTIES TO I.A. NO.VII

Applicant/s : Smt. Gangavva W/o Gadigeppa Akki.

.Vs.

*Opponent/s : Smt. Iramma W/o Danappa Naykar and
others.*

- 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 : 12.11.2025
application is filed*
- iv. Number of the : VII
application*
- v. The date on which : 07.01.2026 (by D.4 & D.28)
objections are filed by
different opponents*

vi. The date on which : 20.01.2026
orders were passed on
the said application

ORDERS ON IA No.VII

This order arises out of interlocutory application No.VII filed by the applicant/plaintiff under Order VI Rule 17 R/w Sec.151 of Civil Procedure Code for amendment of plaint.

Proposed amendment is below:

In page No.9, after para 07 to add para 07(a)

7(ಎ). ದಾವಾ ಆಸ್ತಿಗಳ ಪೈಕಿ ಶೆಡ್ಯೂಲ್ 'ಬ' ಆಸ್ತಿಗಳು ಮತ್ತು ಶೆಡ್ಯೂಲ್ 'ಕ' ಆಸ್ತಿಗಳ ಪೈಕಿ ಅ.ಕ್ರ. ನಂ.2ರ ಕುರಿತು ಪ್ರತಿವಾದಿ ನಂ.28 ನೇದವರು ಮತ್ತು ಪೋತಿ ನಿಂಗಪ್ಪ ಈತನ ವಾರಸಾದಾರರಾದ ಪ್ರತಿವಾದಿ ನಂ.17, 29 ರಿಂದ 33 ಮತ್ತು 35, 36 ನೇದವರು ವಾದಿಯನ್ನು ಮತ್ತು ಇತರೆ ಘರಾಣೇದ ಸದಸ್ಯರನ್ನು ಅಂದರೆ ಮೂಲ ಪುರುಷನ ಹೆಣ್ಣು ಮಕ್ಕಳನ್ನು ಪಕ್ಷಗಾರರನ್ನಾಗಿ ಮಾಡದೇ ವಾದಿಗೆ ಗೊತ್ತಾಗಲಾರದ ಹಾಗೇ ಒಬ್ಬರಿಗೊಬ್ಬರು ಮೀಲಾಪೆಯಾಗಿ ಅಸಲ ದಾವೆ ನಂ.384/2022ನ್ನು ದಾಖಲಿಸಿ ಬೇಕಾಯ್ಡೆ ಂಶಿರವಾಗಿ ಒಬ್ಬರಿಗೊಬ್ಬರು ಮೀಲಾಪೆಯಾಗಿ ಇದೇ ಮಾನ್ಯ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ರಾಜೀ ಮಾಡಿಕೊಂಡು ರಾಜೀ ಡಿಕ್ರಿ ಮಾಡಿಕೊಂಡಿದ್ದು ಖೋಟಿ ವ ಬೇಕಾಯ್ಡೆಶಿರವಾಗಿರುತ್ತದೆ. ಸದರ ರಾಜೀ ಡಿಕ್ರಿಯು ವಾದಿಯ ಮೇಲೆ ಬಂಧನಕಾರಿಯಾಗುವುದಿಲ್ಲ.

2. In page No.11, after para 13 sub para(ಕ) to add para (ಕಕ)

(ಕಕ) ಮಾನ್ಯ ನ್ಯಾಯಾಲಯವು ದಾವಾ ಆಸ್ತಿಗಳ ಪೈಕಿ ಶೆಡ್ಯೂಲ್ 'ಬ' ಆಸ್ತಿಗಳು ಮತ್ತು ಶೆಡ್ಯೂಲ್ 'ಕ' ಆಸ್ತಿಗಳ ಪೈಕಿ ಅ.ಕ್ರ. ನಂ.2 ರ ಕುರಿತು ಪ್ರತಿವಾದಿ ನಂ.28 ನೇದವರು ಮತ್ತು ಪೋತಿ ನಿಂಗಪ್ಪ ಈತನ ವಾರಸಾದಾರರಾದ ಪ್ರತಿವಾದಿ ನಂ.17, 29 ರಿಂದ 33 ಮತ್ತು 35, 36 ನೇದವರು ವಾದಿಯನ್ನು ಹೊರತುಪಡಿಸಿ ಅಸಲ ದಾವೆ ನಂ.38/2022 ರಲ್ಲಿ ಮಾಡಿಕೊಂಡ ರಾಜೀ ಡಿಕ್ರಿ ವಾದಿಯ ಮೇಲೆ ಬಂಧನಕಾರಿಯಾಗುವುದಿಲ್ಲ ಅಂತಾ ಠರಾಯಿಸಲು ಪ್ರಾರ್ಥನೆ ಇದೆ.

2. The brief facts of the affidavit annexed to application is that, The plaintiff has filed this suit seeking relief of partition and declaration in respect of the suit schedule properties against the defendants. Among the suit properties, Schedule B properties and Schedule C properties. Sl.No. 2. The defendant no. 28 is the plaintiff and the defendant no. 17, 29 to 33 and 35, 36 have filed Suit No. 384/ 2022 in this court and have entered into a settlement agreement with each others without Made the plaintiffs as parties to the suit. Therefore the settlement is not binding on the plaintiff and hence it is very necessary to add and amend the plaint in this regard. The defendant no. 28 had filed written statement and therein he has expressed the opinion of compromise decree. Hence the plaintiff got knowledge about the same. And the proposed amendment is necessary for the fair adjudication of the matter. Hence pray for allow the application.

3. The defendant No.4 and 28 have resisted the application by contending that the application is false, frivolous and vexatious. The plaintiff filed this suit against the defendant and the defendants have denied the claim sought by the plaintiff. Now this suit is posted for evidence. The plaintiff now filed this application which is not tenable in the eyes of law. The application is belated and the amended CPC

does not permit at this stage. The plaintiff is not explained why the proposed amendment is not sought at the earliest stage i.e., prior to the framing of issues or before the suit posted for evidence. Hence, on this ground also the I.A. is not tenable. Hence, prayed to dismiss the I.A. with costs.

4. Heard arguments.

5. The following points are for my consideration.

- Point No.1: Whether the plaintiff has made out sufficient grounds to allow the application?
- Point No.2: What order?

6. My findings to the above points are as under:

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

REASONS

7. **Point No.1:** This is the suit filed by the plaintiff against defendant for the relief of partition and separate possession and declaration in respect of the suit schedule properties. When the matter was set down for plaintiff evidence the counsel for plaintiff came up with this application seeking proposed amendment by adding the above said contents in their plaint. On the otherhand, only the contention taken by the defendant No.4 and 28 is the application is belated and the amended CPC does not permit at this stage. The plaintiff is not explained why the proposed amendment is not sought at the earliest stage i.e., prior to the framing of issues or before the suit posted for evidence. Admittedly, the trial of the parties

has not yet commenced. In such circumstances, before commencing trial the amendment is permitted in accordance with law. Moreover, if the said amendment is carry out no hardship caused to the otherside and it is helpful to the parties to decide the real controversy between the parties.

8. It is pertinent to note here that the plaintiff is seeking an order to proposed amendment only with regard to facts is concerned. The trial has not yet begin in between the parties. Therefore, if the said amendment is allowed really it would avoid multiplicity of proceedings.

9. The Hon'ble Supreme Court of India has lays down Principles for Amendment of Pleadings in a decision reported in 2022 SCC OnLine SC 1128, decided on 01.09.2022]

“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).

(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.

(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)”

10. On perusal of the entire materials on record, it is appears to Court that the proposed amendment is very much necessary to adjudicate the real controversy between the parties and also it neither creates any new cause of action nor alter the nature of the suit. The plaintiff ought to have prove the amended facts. Hence, I have not found any good grounds to reject the application. Therefore, I answer **point No.1 in the affirmative.**

11. **Point No.2:** In view of findings on point No.1, this court proceeds to pass the following;

ORDER

I.A. No.VII filed by the plaintiff Under Order VI Rule 17 R/w Sec.151 of Civil Procedure Code is hereby allowed on cost of Rs.200/-.

Thereby, the plaintiff is permitted to carryout the amendment as prayed in the application.

For amendment and amended plaint.

Call on 02.02.2026.

*(Dictated to the Stenographer directly on computer, script corrected and then pronounced by me in the Open Court on this the **20th day of January, 2026**)*

sd/-

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