

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.314/2023**

Dated this the 01<sup>st</sup> day of August, 2025

Plaintiff : Smt. Devakka W/o Shivaputrappa  
Hanchinamani and another.

.Vs.

Defendant : Sri. Gurunathagouda S/o Ninganagouda  
Huchhanagoudra and others.

**PARTIES TO I.A. NO.V**

Applicant/s : Smt. Devakka W/o Shivaputrappa  
Hanchinamani and another.

.Vs.

Opponent/s : Sri. Gurunathagouda S/o Ninganagouda  
Huchhanagoudra and others.

- i. Provision under which : Under Order 6 Rule 17 of CPC.  
application is filed
- ii. Relief sought for : For amendment of plaint.
- iii. The date on which : 07.04.2025  
application is filed

- iv. Number of the : V application
- v. The date on which : 16.06.2025 objections are filed by different opponents
- vi. The date on which : 01.08.2025 orders were passed on the said application

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### **ORDERS ON IA No.V**

*This order arises out of interlocutory application No.V filed by the applicants/plaintiffs under Order VI Rule 17 of Civil Procedure Code for amendment of plaint.*

*2. The brief facts of the affidavit annexed to application is that, only on the other day while scrutinizing the documents of the case, it came to her knowledge that her residential village name is wrongly typed as Kavalur instead of Kavalageri and in the genealogy the death of Kamalavva typed as about 21 years back instead of only 03 years back. Similarly age of the defendant No.3 is wrongly mentioned as 32 years instead of 20 years, and therefore in this pretext, it is necessary to amend the plaint. The said mistake is not intentional it is out of bonafide mistake and ignorance. The amendment sought for is simple and ignorable one. The proposed amendment will not change the nature of the suit and it will not alter the cause of action. Hence, this application and prayed to allow the application.*

3. The defendant No.1 have resisted the application by contending that the application filed by the applicants is not maintainable in law and on facts of the case and the contents of the application and affidavit are false frivolous and vexatious. If the I.A. is allowed, the material injustice would be caused to the defendant. Further, the nature of the suit will be changed as the plaintiff is intending to change the name of the parties such amendment is not permissible under the law. The plaintiff instead of proceeding with the matter, he has filed the present application to drag on the matter. Hence, he prayed to dismiss the I.A.

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

5. The following points are for my consideration.

- Point No.1: Whether the plaintiffs have 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:** Admittedly this is the suit filed by the plaintiff against the defendants for the relief of partition and separate possession in respect of the suit schedule

*properties. When the matter was set down for further chief of P.W.1 the plaintiff filed the present application seeking proposed amendment on the ground that only on the other day while scrutinizing the documents of the case, it came to her knowledge that her residential village name is wrongly typed as Kavalur instead of Kavalageri and in the genealogy the death of Kamalavva typed as about 21 years back instead of only 03 years back. Similarly age of the defendant No.3 is wrongly mentioned as 32 years instead of 20 years, and therefore in this pretext, it is necessary to amend the plaint. The said mistake is not intentional it is out of bonafide mistake and ignorance. The amendment sought for is simple and ignorable one. The proposed amendment will not change the nature of the suit and it will not alter the cause of action.*

*8. On the other hand, the defendant No.1 taken contention that the proposed amendment is not permissible under law.*

*9. The legal position regarding amendment of pleadings after evidence is recorded can be allowed but only under strict conditions, if the party could not have raised the matter before despite due diligence and if the proposed amendment will change the nature of the case or cause prejudice to the other side.*

*10. It is pertinent to note here that in this case already matter was set down for further chief of P.W.1 and the evidence of the plaintiff has not been completed and the defendant has not yet cross examined the P.W.1. Moreover,*

*the proposed amendment is only with respect to changing of residence as well as age and name of the party is concerned. If it is amended no hardship would cause to the otherside.*

11. *Further, in the present case on hand, there is a satisfactory explanation is offered as to why the proposed amendment could not have been raised earlier. It is also well settled principles of law that if the amendment is necessary to decide real controversy of the parties it has to be allowed at any stage of the case. The proviso shows after commencement of trial the party intending to make amendment has to prove his due diligence. it is an admitted fact that the plaintiff got every knowledge regarding the name and address of the parties. But they have not taken any steps at earlier stage, hence delay is caused if the application is allowed. But the delay is not criteria to dismiss the prayer of the plaintiff, otherwise it would cause multiplicity of the proceedings. Per contra delay may be construed as liberally by imposing suitable cost to other side to compensate the delay.*

12. *No doubt it is well settled principle of law as well as the observation by the Apex Court is that courts while deciding such prayers of amendment should not adoptive a hyper technical approach, liberal approach should be the general rule. Particularly in cases where the other side can be compensated with the cost and amendments are allowed in the pleadings to avoid uncalled for multiplicity of litigation. It is so held in **AIR 2006 SCW page 1538 in between Rajesh Kumar Agarwal and other Vs K.K.Modhi and others.** In*

*this case the proposed amendment sought by the plaintiff by way of including the property appears to be necessary for determining the controversy between the parties and in order to provide equity to the parties of the suit all the averments should be on record. Any how if the proposed amendment is allowed the opportunity is available to the defendant to contest the same. 10. Any how liberal approach should be the general rule particularly in cases where the other side can be compensated with the cost and avoid uncalled for multiplicity of litigation in this case. Moreover the amendment sought by the plaintiff will not change the nature of the suit and it will not prejudice the defendant. Therefore said amendment sought by the plaintiff is necessary for determining the real question in controversy between the parties. But the application filed by the plaintiff belatedly. Therefore delay is caused on the part of the plaintiff. Hence the application filed by the plaintiff is deserves to be allowed on payment of suitable cost to other side. Furthermore the amendment, if allowed it would not cause any hardship to the defendants. Therefore, this Court is of the opinion that the application is deserves to be allowed in the ends of justice in order to avoid multiplicity of proceedings. Therefore, I answer **point No.1 in the Affirmative.***

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

**ORDER**

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

*Plaintiff is to carry out amendment and  
furnish amended plaint as per IA.No.V.*

*(Dictated to the Stenographer directly on computer, script corrected and then  
pronounced by me in the Open Court on this the **01<sup>st</sup> day of August, 2025**)*

*sd/-*

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