

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.504/2022

Dated this the 19th day of November, 2025

*Plaintiff : Iramma W/o Sanganabasappa
Sangamshettar and others.*

.Vs.

*Defendant : Basappa @ Sannabasappa S/o
Shivasangappa Sangamshettar and
others.*

PARTIES TO I.A. NO.XV

Applicant/s : *Basappa @ Sannabasappa S/o
Shivasangappa Sangamshettar.*

.Vs.

Opponent/s : *Iramma W/o Sanganabasappa
Sangamshettar 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 written statement.*
- iii. The date on which : 14.10.2025
application is filed*

- iv. Number of the : XV application
- v. The date on which : 28.10.2025 (by plaintiff) objections are filed by different opponents
- vi. The date on which : 19.11.2025 orders were passed on the said application

ORDERS ON IA No.XV

This order arises out of interlocutory application No.XV filed by the applicant/defendant No.1 under Order VI Rule 17 R/w Sec.151 of Civil Procedure Code for amendment of written statement.

Description of the proposed amendment is below:

- 1) After para 13 to add para 13(a) 11(a) ವಾದಿಯರು ಒಟ್ಟು ಕುಟುಂಬದ ಆಸ್ತಿಗಳಾದ ಹುಬ್ಬಳ್ಳಿ ನಗರದ ಸಿಟಿವಿಸ್ ವಾರ್ಡ್ ನಂ.2, ಸಿಟಿವಿಸ್ ನಂ.1759/1 ಬ ಕ್ಷೇತ್ರ 36 ಸ್ಕ್ವೇರ್ ಯಾರ್ಡ್ ಮತ್ತು ಹಳೇ ಹುಬ್ಬಳ್ಳಿಯ ಈಶ್ವರನಗರದಲ್ಲಿರುವ ಮನೆ ಈ ಆಸ್ತಿಗಳನ್ನು ಬಿಟ್ಟು ಕೇವಲ ಭಾಗಶಃ ಆಸ್ತಿಗಳಲ್ಲಿ ಹಿಸ್ಸೆ ಕೋರಿ ದಾವೆ ಸಲ್ಲಿಸಿದ್ದಾರೆ. ಕಾರಣ ವಾದಿಯರ ದಾವೆಯು ಕಾನೂನಿನಡಿ ನಿಲ್ಲಾರದು (Suit for partial partition not maintainable)

2. The brief facts of the affidavit annexed to application is that, the plaintiffs have filed the present suit for alleged share in the suit properties. The plaintiffs have not included all the joint family properties mentioned in the application. The defendant No.1 advanced in age. Through over sight defendant No.1 has not taken this defense in his written

statement as he is unable to collect the particulars of the properties. The other day only he able to collect the documents relating the said properties. The proposed amendment is necessary to adjudicate the matter in dispute. Hence, prayed to allow the application.

3. The plaintiff No.4 has resisted the application by contending that the application filed one under order VI Rule 17 R/w section 151 of C.P.C is not tenable either in law or on facts of the case and the application is filed at very belated stage. The defendant ought to have taken up the contention of proposed amendment while filing Written statement only. The application filed now is after thought. The property bearing CTS No.1739/1B situated at ward No.2 measuring 36 Sq yards is self-acquired property of the plaintiff No.4. The plaintiff No.4 has purchased the said property in the name of plaintiff No.1 from its original owner namely Ganesh S/o Kantappa Deshanur for valuable consideration of Rs.2,50,000/- and the sale deed is registered on 27.07.2015 and on the same day possession of the property is handover to plaintiff No.1. Hence the said property is self-acquired property off plaintiff No.4 in the name of plaintiff No.1. Hence, it cannot be treated as joint family property. Therefore, defendant No.1 has no Locus standi to include the said property as one of the suit property. It is further submitted that, another property as shown in the application i.e., property situated at old Hubballi Ishwar Nagar house property is not at all concern to the family of plaintiffs. Hence question of adding the said property as one of suit property does not

arise at all. The defendant No.1 with the sole intention to drag the case filed this false and frivolous application which is not sustainable in the eye of law. The defendant No.1 has not assigned any valid reasons to include the said properties as suit properties. Hence, prayed to dismiss the application with costs.

4. The plaintiff No.1 to 3 have filed memo, adopting the objections of the plaintiff No.4 to the I.A. No.XV.

5. Heard arguments.

6. The following points are for my consideration.

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

7. 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

8. **Point No.1:** This is the suit of the plaintiffs for the relief of partition and separate possession of plaintiff 1/6th share jointly in the suit schedule property against the defendants. When the matter is set down for further cross of P.W.1, he came up with the present application seeking proposed amendment in his written statement. Admittedly, the trial of the parties has 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.

9. It is pertinent to note here that the defendant No.1 is seeking permission to amend the written statement by incorporating an additional plea that the suit of the plaintiffs is for partial partition not maintainable is concerned. Admittedly in a suit for partition it is well settled law that all the properties and parties should be on record. Therefore, as per the contention of the defendant No.1 by oversight he has not include the proposed amendment. Therefore, if the said amendment is allowed really it would helpful to decide the matter in fair adjudication.

10. Whether the parties are entitle share or not and it is a joint family property or not is to be consider at the time of full fledged trial.

11. 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 mala fide, 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)”

12. 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 contention of the plaintiffs in respect to the delay does not holds any kind of water. The defendant No.1 ought to have prove the amended facts. Hence, I have not found any good grounds to reject the application. Anyhow application is in belated stage. Hence, if the said application is allowed by imposing cost to the

otherside no hardship cause to the other side. Therefore, I answer **point No.1 in the affirmative.**

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

ORDER

I.A. No.XV filed by the defendant No.1 under Order VI Rule 17 R/w Sec.151 of Civil Procedure Code is hereby allowed on cost of Rs.500/-.

Thereby, the defendant No.1 is permitted to carryout the amendment of his written statement as prayed in the application.

For amendment and amended written statement by:02.12.2025.

*(Dictated to the Stenographer directly on computer, script corrected and then pronounced by me in the Open Court on this the **19th day of November, 2025**)*

sd/-

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