

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

PRESENT

**SRI. RAVINDRA L.HONOLE, B.A., LL.B. (Sp1)
SENIOR CIVIL JUDGE AND JMFC, KALAGHATAGI**

DATED THIS 02ND DAY OF JUNE 2025

O.S. No.28/2022

PLAINTIFFS :

Poornima D/o Achuthrao Desai
and others

(Sri. R.G.N., Adv)

Vs

DEFENDANTS:

Achuthrao Krishnarao Desai
and others

(D-1-Sri. V.R.P., Adv)

(D-2(b to e)-Sri. P.S.N., Adv)

(D-4 & 5-Sri. M.G.C., Adv)

PARTIES TO IA No.15

APPLICANT:

Anita D/o Achuthrao Desai and others.

Vs

OPPONENTS:

Achuthrao Krishnarao Desai and others

ORDER ON I.A.No.15

The plaintiffs have filed the application u/o 6 rule
17 of CPC for bringing proposed amendment to the
plaint.

2. The application is supported by the affidavit sworn to by the plaintiff No.3 wherein it is stated that they have filed suit for partition and separate possession. Due to oversight they have not included some pleading as mentioned in the application. The amendment will not change the nature of suit and to avoid multiplicity of proceedings it will help the court to adjudicate the matter effectually. The application is not allowed they will put into loss and hardship. On the other hand, no loss and hardship would be caused. Therefore, prays for allowing the application.

3. The defendant No.2(b) to (e) have filed objections denying the contents of application. It is contended that after closing plaintiffs side evidence defendant has been partly cross examined. Number of times case is set out for further cross examination of defendant, meanwhile the plaintiffs have got impleaded parties and one of the application filed by the plaintiffs has been dismissed and third party petition was allowed. After passing the orders on I.A. dated 18.01.2025 the plaintiffs have filed this application.

The relief sought by the plaintiffs under the proposed amendment is nothing but new suit with different relief. The nature of suit will be change if the application is allowed. The plaintiffs intending to change the nature of suit by amendment and to fill up the lacuna. If the application is allowed it will cause injustice to the defendants. The plaintiffs intending to challenge the relinquishment deed and gift deed and the entries which is not permissible under law. To drag on the matter this application has been filed. Therefore, prays for dismissal of application.

4. Heard the arguments.

5. The points arise for my consideration are:

1. Whether the applicants/plaintiffs have made out sufficient grounds to allow the proposed amendment which is necessary for effective adjudication of the matter in controversy between parties?

2. What order?

6. My findings on the above points are:

POINT No.1 : In the negative

POINT No.2 : As per the final order
for the following

REASONS

7. **POINT No.1:** The plaintiffs have filed suit for partition and separate possession. The matter is posted for further cross of DW.1, at that time this application has been filed. I have gone through the proposed amendment sought by the plaintiffs. The plaintiffs wants to bring proposed amendment after para No.8 of the plaint. In the proposed amendment they have sought for declaration of relinquishment deed dated 02.01.1943 is not binding on the legitimate share of the plaintiffs. Further they have sought relief that, Mutation No.675 dated 17.07.1969 is fake and bogus. They have also sought bringing amendment to plaint in respect of Mutation No.191 dated 30.07.1935. They have also pleaded about handing over possession of suit property to the ancestors of plaintiffs in respect of suit property. They wants to bring proposed amendment to the plaint in respect of ancestors of the plaintiffs and their relationship with defendants. Further, plaintiffs have sought amendment in respect of mutation registers pertaining to suit property and

facts about performing pooja of temple. By way of amendment plaintiffs have sought gift deed executed by deceased Madhvacharaya S/o Ramacharaya Gudi in favour of Hanmanth S/o Madhvacharaya dated 04.01.1943 is not binding on plaintiffs. It is submitted that proposed amendment is necessary for adjudication of matter in controversy between parties.

8. On going through the above pleadings sought by the plaintiffs by way of proposed amendment shows that the plaintiffs by virtue of amendment intends to seek the relief of declaration in respect of relinquishment deed dated 02.01.1943 and mutation registers for the year 1969 and gift deed dated 04.01.1943. The proposed amendment sought under application is nothing but new suit which will change the nature of suit. The plaintiffs having knowledge of all the facts as sought under application have not pleaded anything about these facts. By way of amendment they wants to bring facts. When the matter is posted for further cross of DW.1 at that time the plaintiffs have filed this application stating that

due to oversight at the time of filing suit they have not pleaded the facts as sought under proposed amendment. The grounds urged in the application is not sufficient to permit the plaintiffs to bring proposed amendment to the plaint.

9. The proposed amendment sought under application will change the nature of suit. There is no typographical or arithmetical error in the plaint. The evidence of parties has already been commenced and matter is posted for further cross of DW.1. It is well settled law that the amendment of pleadings after commencement of trial is not permissible under law. The plaintiffs in order to fill up the lacuna have filed this application. The pleadings sought under proposed amendment is barred by period of limitation as prescribed under law.

10. Admittedly suit of the plaintiff is for partition and separate possession. By way of amendment plaintiffs wants to convert it as declaration suit which is also governed by law of limitation. In order to effective adjudication of matter in controversy between

parties the proposed amendment is not necessary. The plaintiffs are not diligent in conducting case. The plaintiffs have filed this application at belated stage and same is not maintainable. The application is deserves to be dismissed with cost. Hence, I have answered point No.1 in the negative.

11. **POINT No.2:** As discussed above, court proceed to pass the following:

ORDER

The application filed by the applicants/ plaintiffs U/o 6 Rule 17 of CPC is hereby rejected with cost of Rs.2000/-.

(Dictated to stenographer directly on computer, typed by him, then corrected, printed and pronounced by me in the open court on this **02nd day of June 2025**)

(R.L.HONOLE)
SR. CIVIL JUDGE AND JMFC,
KALAGHATAGI