

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

PRESENT

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

DATED THIS 16TH DAY OF OCTOBER 2024
O.S. No.53/2022

PLAINTIFFS:

Kallappa calling to be the son of
Gangappa Neelannavar and others

(Sri. I.B.H., Adv)

Vs

DEFENDANTS:

Gangappa N. Neelannavar and others

(D-1 to 3 Sri. G.R.H., Adv)

PARTIES TO IA

APPLICANTS:

Kallappa calling to be the son of
Gangappa Neelannavar and others

Vs

OPPONENTS:

Gangappa N. Neelannavar and others

ORDER ON I.A.No.14 AND 15

The applicants/defendants have filed these
applications u/o 6 rule 17 of CPC for bringing

proposed amendment to the written statement as sought in the applications.

2. These applications are supported by the affidavit sworn to by the defendant No.1, wherein it is stated that at the time of preparing for hearing it came to knowledge that plaintiff No.3 is the wife of Basappa Hosmani and plaintiff No. 2 and 3 are the children born to him. They have stated in the written statement that it has become necessary to seek counter claim. Therefore, it is necessary to bring amendment to the written statement as sought in the applications. Hence, prays for allowing the applications.

3. The plaintiffs have filed separate objection to the both applications denying the contents of applications. It is submitted that the defendants have taken unnecessary and frivolous allegations in the counter claim. They have contended that marriage was registered before the Sub-Registrar, Kundgol and also contended that marriage was registered at Kalaghatagi Sub-Registrar office. To drag on the proceedings these applications are filed. The defendants falsely claiming

that plaintiff No.3 married to some other person to insult the plaintiffs. To grab the property of plaintiffs the defendants creating false relationship of plaintiffs with some other person. Further it is contended that the counter claim sought to the amended written statement is not maintainable in the suit filed by the plaintiffs. Defendants can file separate suit and seek appropriate relief. The counter claim is filed after filing written statement which is not maintainable. There is no cause of action to file the counter claim. Therefore, the applications in the present form are not maintainable. Therefore, prays for rejection of applications with cost.

4. Heard both counsels.

5. The points arise for my consideration are:

1. Whether the applicants/defendants 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 Affirmative

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. During pendency of the case the defendants have sought for amendment to the written statement. I have gone through the proposed amendment sought to the written statement. Though the defendants have filed two separate applications but same are one and the same. The relief sought in the both the applications are same.

8. The plaintiff No.1 is claiming to be the wife and plaintiff No.2 and 3 are the sons of defendant No.1. The defendants have denied their relationship with plaintiffs. It specifically contended that plaintiff No.1 is not the wife and plaintiff No.2 and 3 are not children of defendant No.1. Further the defendants have specific contention in the counter claim that plaintiff No.1 is the wife of one Basappa Hosmani resident of Saunshi village in Kundgol taluk and the plaintiff No.2 and 3 born to said Basappa. Further it is contended that

defendant No.1 is the bachelor and not married with plaintiff No.3 and he is not having any relationship. It is contended that defendant No.1 is ready to go for DNA test.

9. The defendants in support of their case have produced documents. The documents produced by the defendants are public documents and having value under law. In view of specific contention taken by the defendants and to effective adjudication of the matter in controversy between parties it is just and necessary to permit the defendants to bring proposed amendment to the written statement. If the application is allowed no harm or prejudice would be caused to the plaintiffs. On the other hand, the defendants will be put into great hardship. Further the application is not allowed it will cause for multiplicity of proceedings. Moreover, the evidence of parties is not yet commenced. Therefore, this court is of the opinion that the amendment sought to the applications is to be allowed.

10. The contention of plaintiffs that in the suit filed by the plaintiffs counter claim is not maintainable is not correct. To avoid multiplicity of proceedings and to minimize the litigation it is necessary to allow the counter claim sought by the defendants. Further the plaintiffs have an opportunity to file further pleadings to the counter claim. Accordingly, I have answered point No.1 in the affirmative.

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

ORDER

The applications filed by the applicants/ defendants U/o 6 Rule 17 of CPC is hereby allowed.

Defendants are permitted to amend the written statement as prayed for.

No order as to cost.

(Dictated to stenographer directly on computer, typed by him, then corrected, printed and pronounced by me in the open court on this **16th day of October 2024**)

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