

**IN THE COURT OF PRL. SENIOR CIVIL JUDGE AND
CJM, GADAG**

PRESENT

**SRI. G.R. SHETTAR., B.com. LL.B (Spl)
PRL. SENIOR CIVIL JUDGE AND CJM, GADAG**

DATED THIS 06TH DAY OF JUNE, 2025

O.S.No.147/2015

PLAINTIFFS:

1. Tarabai W/o Ishwarappa Manvi,
Age: 100 years, Occ:Household Work,
R/o Station Road, Opp: Gadag-Betageri
Municipal Corporation, Gadag.
2. **Deleted as per order dated 20/11/2020**
3. Nanda W/o Shivakumar Kadabadi,
Age: 48 years, Occ:Housewife,
R/o "Nandana" Plot No.54,
Opp: SBI ATM, Vaibhav Nagar,
Belgaum – 590010.
4. Kirti W/o Arunkumar Kadali,
Age: 46 years, Occ:Housewife,
R/o Plot No.29, Kiran Building,
Basav Nagar, Ilkal – 587125.
5. Arati W/o Rajesh Navar,
Age: 44 years, Occ:Housewife,
R/o Adarsh Palm Retreat (Next to Intel)
Outer Ring Road, Devarbisanhalli Villa 445,
Bangalore.

6. Bharti W/o Rahul Amble,
Age: 41 years, Occ:Doctor,
R/o Sector – 6, Plot No.210,
Junimill Compound, Umahousing Society,
Moraji Peth, Sholapur, Maharastra – 413001.

(R/by Sri. M.S.B. Advocate)

Vs

DEFENDANTS:

1. Bharati W/o Ishwarappa Manvi,
Age: 49 years, Occ:Household,
R/o Opp: G.B.C.M.C., Gadag.
2. Malleshappa S/o Siddlingappa Manvi,
Age: 42 years, Occ: Profession,
R/o Opp:G.B.C.M.C., Gadag.
4. Jyothi W/o Pramod Desai,
Age: 51 years, Occ:Profession,
R/o No.73, “Apeksha” Shirur Park,
2nd Stage, Vidyanagar, Hubballi – 31.

(Dfts.No.1-R/by Sri.P.S.R. Advocate)

(Dft.No.2- Ex-parte)

(Dft.No.3- R/by Sri.T.V.H. Advocate)

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PARTIES to I.A. No.31

APPLICANTS/

DEFENDANTS :

Bharati I.Manvi

Vs

OPPONENTS/

PLAINTIFFS :

Tarabai Manvi and others

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ORDER ON I.A.31 U/O 6 RULE 17 OF CPC

Applicant / defendant No.1 has filed this application praying for permitting her to amend the written statement as per the proposed amendment.

2. Application is supported by the affidavit sworn to by the defendant No.1 wherein it is contended that as per the oral partition dated: 31/03/1991 and another oral partition dated: 21/12/2000, subsequently written in writing, properties i.e., movable and immovable have been allotted to the respective shares of the plaintiff No.2 to 6 to the extent of their shares respectively, husband of this defendant No.1 (late Ishwarappa), Malleshappa – defendant No.2 and defendant No.3 are enjoying their respective shares fallen to their respective shares. Therefore, deceased Ishwarappa got his own and absolute right, title and actual possession in the suit properties to the extent of his share till his death. Plaintiff No.2 died on 11/03/2000, after his death, her legal heirs i.e.

defendant No.1 being the daughter-in-law is entitled for 1/7th share in the properties belongs to the plaintiff No.2, same be inserted. It is further contended that as per the oral partition dated : 24/12/2000 subsequently written in writing amongst plaintiffs No.2 to 6 and husband of defendant No.1, the properties standing jointly in the name of husband of defendant No.1 and defendant No.2 to the extent of $\frac{1}{2}$ share as described in the proposed amendment in the written statement at page No.7 after para No.13(2) as new para No.13(2)A.

3. It is further contended that the residential house bearing CTS No.611/1 was given to the widow, plaintiff No.2 subject to condition that after her death, her sons i.e., husband of defendant No.1 and defendant No.2 shall take the same jointly and absolutely, the defendant No.2 has no right to alienate the same in any manner. As per the said condition, she should given right of residence to defendant No.1's husband and

defendant No.2 along with wives of her sons, her daughter-in-law when sons are married. It is further contended that late Ishwarappa was enjoying the property fallen to his share and taking rent from the shops to the extent of his share, till he was alive. The defendant No.2 and plaintiff No.2 were also enjoying $1/3^{\text{rd}}$ share as per the memorandum of partition. After death of husband of defendant No.2, defendant No.2 and plaintiff No.2 only collecting the rent of the shops and started harassing this defendant. Plaintiff No.2 and defendant No.2 told her that they will hand over the share in the rent and to effect partition of the properties for some reasons, finally on 28/08/2023, this defendant wrote a letter to the defendant No.2 to hand over the rent and to effect partition of joint properties to the extent of $1/3^{\text{rd}}$ share as per memorandum of partition dated: 21/12/2000, the defendant No.2 in his reply took U-turn and refused to hand over the share of rent. It is further

contended that the plaintiff No.2 had deposited the amount nearly Rs.2,00,00,000/- (two Crores) belong to her share, after her death, defendant No.2 colluding with defendant No.3 has withdrawn all the amount nearly Rs.2,00,00,000/-, gold, diamond ornaments, silver items kept in bank locker from the bank of Maharashtra, Gadag. Plaintiff No.1 colluding with defendant No.3 has withdrawn the amount from Bailahongal Co-Operative Bank, Gadag, as per the bank statements. Subsequently, withdrawn by the defendant No.3 colluding with defendant No.2, plaintiff No.3 to 6 without having any authority. As per the present available bank statement, an amount of Rs.40,74,850/- from the Bank of Maharashtra, Gadag and Rs.29,03,000/- from Bailahongal Co-Operative Bank, Gadag, total Rs.69,77,850/-, said amount along with interest has been withdrawn by the plaintiff along with plaintiff No.3 to 6 by giving false information by producing false

documents to the bank authorities. Therefore, the proposed amendment is necessary. It is further contended that if the amendment as prayed is not allowed, the defendant No.1 will be put to heavy loss and injustice, which cannot be compensated in terms of money and it will lead multiplicity of cases. On the contrary, no loss or prejudice will be caused to the plaintiff No.3 to 6, defendant No.2 to 3. Hence, prayed for allowing the application.

4. Learned counsel for the plaintiff has filed objections denying the application and averments made in the affidavit filed in support of the application as false. It is contended that the defendant No.1 styled the proposed amendment as counterclaim, but the so called counterclaim does not disclose any of the ingredients as contemplated U/o 8 Rule 6A of CPC. Therefore, the application is devoid of merits and liable to be dismissed. The defendant No.1 has filed the application for seeking

amendment at the later stage, but the application and also affidavit does not disclose the reason for seeking such amendment at the belated stage. Hence, prayed for dismissal of the application with exemplary cost of Rs.10,000/-

5. Heard the arguments.

6. The points arise for my consideration are:

P O I N T S

I. Whether the applicant/defendant No.1 has made out sufficient grounds to allow the application to amend the written statement as prayed for?

II. What order ?

7. My findings on the above points are:

POINT No.I : In the Affirmative

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

R E A S O N S

8. **POINTS No.I**: Applicant/defendant No.1 has filed the present application praying for amendment of the written statement by adding paras as mentioned in

the proposed amendment by way of counterclaim. It is further contended that after the death of plaintiff No.2, the defendant No.1 and defendant No.2 are having share in the properties left by plaintiff No.2, but the defendants No.2 and 3 and other plaintiffs colluding with each other have withdrawn the amounts standing in the name of plaintiff No.2 and also taken the golden ornaments, diamond and silver items belongs to the plaintiff No.2, all these aspects are required to be narrated by amending the written statement/counterclaim. It is further contended that the proposed amendment is very much necessary to decide the case.

9. Per contra, plaintiffs have opposed the application contending that the applicant/defendant No.1 has filed this application at belated stage, no valid grounds are assigned why the application is filed at belated stage, the defendant No.1 wants to introduce counterclaim, but there is no any mention of the

ingredients of counterclaim U/o 8 Rule 6A of CPC. Hence, prayed for rejection of the application.

10. Learned counsel for the applicant/defendant No.1 has argued with force that the proposed amending is nothing but better clarification of the facts of the case, the defendant is not taking away any of the earlier pleadings but intending to add some additional pleading which are essential for proper and effective adjudication of the matter in controversy. and the proposed amendment will neither affect the cause of action nor change the nature of the case. Hence, prayed for allowing the application.

11. Per contra, learned counsel for the plaintiff has vehemently argued that this is the suit of the year 2015, the defendant No.1 has filed written statement in the year 2016 itself, after allowing the copy at belated stage, the defendant No.1 had come up with this application to amend the written statement without making valid

grounds. It is further argued that even in the proposed amendment, same facts are narrated which overlaps the earlier pleadings of the defendant No.1. It is further contended that defendant No.1 had filed I.A.No.30 for the same relief but got withdrawn the said application. Therefore, application filed by the defendant No.1 at belated stage is not maintainable. Hence, prayed for dismissal of the application with cost.

12. I have gone through the entire material carefully. Applicant/defendant No.1 has filed this application praying for permission to amend the written statement i.e., to add some paras as per the proposed amendment and to set up counterclaim. It is contended that after the death of her mother-in-law, she being the legal heir of the predeceased son of plaintiff No.2 is entitled for share in the property left by his mother-in-law. As such, proposed amendment is necessary. Per contra, application is opposed by the plaintiffs on the

ground that the application is filed at belated stage, similar application was also filed and it was withdrawn, no valid grounds are assigned, ingredients of counterclaim as required U/o 8 Rule 6A of CPC are not fulfilled.

13. It is true that it is the case of the year 2015. Applicant/defendant No.1 has filed the written statement on 11/04/2016. The amendments are to be liberally construed, amendments are to be allowed, if such amendment not affect the cause of action and not change the nature of the suit and such amendments shall be sought before settlement of issues. Amendments can be allowed even at the appellate stage if, the valid grounds are assigned. It is the contention of the applicant/defendant No.1 that after the death of plaintiff No.2 she being the wife of the deceased son plaintiff No.2 is also having share as such setting up of the counter claim by way of amendment is necessary.

14. It is true that the defendant No.1 has filed written statement in the year 2016 and matter is posted for evidence. The defendant No.1 has contended that the plaintiff No.2 died on 11.03.2020 and the defendant No.1 has filed this application on 02.12.2024 i.e., after lapse of 04 years. The plaintiffs have contended that application is filed at belated stage, the contents of the proposed amendment is nothing but overlapping the earlier pleading. Though the contention of the plaintiffs is right but admittedly one of the sharer died during the pendency of suit and the defendant No.1 is claiming that she is also share in the share of the deceased plaintiff No.2. As per the judgment reported in **2016 (1) KCCR -73 KARNATAKA HIGH COURT** Between **Smt.Puttamaramma Vs Giryappa & Others** case, the amendment can be allowed even at the appellate stage. Apart from this the applicant/ defendant is not taking away any of the earlier pleading but she want to add

some additional pleadings. Under such circumstances if the amendment as sought is not allowed the applicant/defendant No.1 will be deprived of setting up her claim, as such it is just and proper to allow the amendment as sought by the applicant/ defendant No.1. So, the proposed amendment to the written statement of the defendant No.1 appears to be necessary for effective adjudication of the matter. Even after the amendment to the written statement of the defendant No.1, the plaintiffs and other defendants are having every opportunity to rebut the same by filing rejoinder and additional written statement. Therefore, I am of the considered opinion that there are sufficient grounds and reasons to allow the amendment as sought by the applicant/ defendant No.1. So, far as inconvenience caused to the plaintiffs is concerned, it can be met with by awarding some cost. Hence, point No.1 is answered in the Affirmative.

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

ORDER

I.A.No.31 filed by the defendant No.1/applicant U/o 6 Rule 17 of CPC is allowed on cost of Rs.1,000/-.

Applicant/ defendant No.1 is permitted to amend the written statement as per proposed amendment.

No order as to cost.

(Dictated to Stenographer, transcribed and typed by him, printed, then corrected and pronounced by me in the open court on this **06th day of June, 2025**)

Sd/-

(G.R.SHETTAR)

**Prl. Senior Civil Judge & CJM.,
GADAG**