

KAHS310000632005



**IN THE COURT OF CIVIL JUDGE & JMFC**

**AT ARKALAGUD**

**PRESENT** : SMT. CHAMPASHREE R. B.A.L., L.L.B., L.L.M.,  
Civil Judge & JMFC,  
Arkalagud.

**O.S. No.276/2005**

**Dated this the 02<sup>nd</sup> day of August, 2024**

**Between :**

Jayamma W/o Puttaraju,  
Aged about 40 years,  
Masarangala village,  
Mallipatna Hobli,  
Arakalagud Taluk,  
Hassan District.

..... **Plaintiff**

**(Sri. Kithoor Dharmappa, Advocate)**

**AND**

M.C. Erappa S/o Late Channabasavegowda,  
Aged about 58 years,  
Masarangala village,  
Mallipatna Hobli,  
Arakalagud Taluk,  
Hassan District.

.....**Defendant**

**(Sri.R.K.Manjunatha, Advocate for Defendant)**

**PARTIES TO IA NO. V**

**Applicant:** M.C. Erappa,  
 S/o Late Channabasavegowda,  
 Aged about 58 years,  
 Masarangala village,  
 Mallipatna Hobli,  
 Arakalagud Taluk,  
 Hassan District.

-V/s-

**Opponents:** Jayamma

|    |                                                                   |                                            |
|----|-------------------------------------------------------------------|--------------------------------------------|
| 1. | Provision under which application is filed                        | Order 6 Rule 17 of Code Of Civil Procedure |
| 2. | Relief sought for                                                 | Amended plaint                             |
| 3. | The date on which the application is filed                        | 26/03/2024                                 |
| 4. | Number of application                                             | V                                          |
| 5. | The date on which the objections are filed by different opponents | 30/03/2024                                 |
| 6. | The date on which the orders were passed on the said application. | 02/08/2024                                 |

**ORDERS ON IA NO.V FILED BY DEFENDANT UNDER  
 ORDER 6 RULES 17 OF CODE OF CIVIL PROCEDURE**

At the stage of evidence on Addl. Issue, counsel for Defendant filed present application under Order VI Rule 17

of Code of Civil Procedure, 1908 seeking to amend the written statement by inserting para No.4(a) after para No. 4 as under:

4 ಎ. ವಾದಿಯ ದಾವಾವು ಕಾನೂನು ಮತ್ತು ವಿದ್ಯಮಾನಗಳ ರೀತಿ ನಿಲ್ಲತಕ್ಕದ್ದಲ್ಲ. ವಾದಿಯು ತನ್ನ ದಾವಾದಲ್ಲಿ ಅವಶ್ಯಕ ಪಕ್ಷಗಾರರನ್ನು ದಾವಾದ ಪಕ್ಷಗಾರರನ್ನಾಗಿ ಮಾಡಿರುವುದಿಲ್ಲ. ಅಲ್ಲದೇ ವಾದಿಯು ತನ್ನ ದಾವಾದಲ್ಲಿ ಒಟ್ಟು ಕುಟುಂಬದ ಎಲ್ಲಾ ಸ್ವತ್ತುಗಳನ್ನು ದಾವಾದಲ್ಲಿ ಸೇರ್ಪಡೆ ಮಾಡದೇ ದಾವಾ ತಂದಿರುತ್ತಾರೆ. ಆದ್ದರಿಂದ ವಾದಿಯ ದಾವಾವು ನಾನ್ ಜಾಯಿಂಡರ್ ಆಫ್ ನೆಸಸರಿ ಪಾರ್ಟಿಸ್ ಹಾಗೂ ಪಾರ್ಷಿಯಲ್ ಪಾರ್ಟಿಸನ್ ರೀತಿಯ ನಿಲ್ಲತಕ್ಕದ್ದಲ್ಲ.

2. Along with the application, Defendant filed an affidavit stating that Plaintiff instituted this suit against him and Defendant while filing his written statement could not mention proposed amendment facts, therefore, if present application is allowed he could disprove the Plaintiff's case. Hence, present application.

3. Counsel for Plaintiff files objections to the present application contending that present application contending that, contents of present applications are false. It is contended that, present suit is of the year 2005, Defendant filed written statement and both the parties lead the evidence 19 years ago and now Plaintiff has filed present application seeking to amend the written statement is against the law and the same is not maintainable. It is

contended that, the Defendant is wasting the valuable time of the Court . Hence prays to reject the application.

4. Heard by both the counsel. On the basis of aforesaid applications and objections, the following points arise for consideration of this Court:

**1.Whether the Defendant /applicant  
has made out grounds to allow the  
application ?**

**2. What order ?**

5. Findings of this Court on the above said points are as follows:

**Point No.1: In the Affirmative**

**Point No.2: As per final order for the following:**

**REASONS**

**6. Point No. 1:** On going through the record it is noticed that present suit is for Partition and Separate Possession and it is noticed that Defendant seeks to amend by inserting a paragraph which states that, Plaintiff has not included all the members of the joint family and all properties of joint family are not included in the suit.

7. Further, it is noticed that, present suit was disposed on 04.12.2015 decreeing the suit, against the said decree Defendant preferred an appeal in R.A.04/2016 which was allowed by the appellate Court and remanded the suit with a specific direction that, *after remand of the matter , the trial court shall frame Additional Issue on the point of the non-joinder of necessary parties and non inclusion of all family properties in the suit, permit the Defendant No.1 to lead his evidence thereon after recording such additional evidence as may be adduced by both the parties, dispose of the matter afresh in accordance with the law.*

8. On going through the specific directions of the appellate Court it is clear that Addl. Issue on the point of non joinder of necessary parties and non inclusion of all family properties in the suit shall be heard by this Court. This being the specific direction of the appellate Court and even Defendant No.1 by way of amendment is seeking to mention his objections with respect to non- joinder of necessary parties and non inclusion of all family members is permissible. Therefore, as per the directions of the appellate Court it is necessary to permit the proposed amendment. **Hence, this Court answer point No.1 in the affirmative.**

**9. Point No. 2 :-** For the above said discussion to point No.1, this Court proceed to pass the following:

**ORDER**

I.A.No.V filed by Defendant  
under Order VI Rule 17 of Code  
Of Civil Procedure, 1908 is  
**hereby allowed.**

(Dictated directly to the stenographer on Computer, the same is revised, edited and corrected by me and then pronounced in the Open Court on this the 02<sup>nd</sup> day of August 2024).

**Civil Judge and J.M.F.C.,  
Arakalagud.**