

KAHS410006162009



**IN THE COURT OF THE PRL.CIVIL JUDGE AND JMFC.,
ARASIKERE.**

O.S.No.364/2009

**PRESENT: SRI.SANDESH V. BHANDARY
B.A. LL.B., LL.M.
Prl. Civil Judge & JMFC
Arasikere**

DATED ON THIS THE 15th DAY OF JULY, 2024

PLAINTIFFS:

1. Sri.T.S.Revegowda and others
(By Sri.VB Advocate)

// Versus //

DEFENDANTS:

1. Sri.T.S.Niranjanamurthy and others
(By Sri.KAR Advocate)

RANK OF THE PARTIES IN I.A.NO.XXX

APPLICANT/ DEFENDANT NO.2

: Smt.Kalavathi

V/s

OPPONENT/PLAINTIFF

: Sri.Revegowda and others

i	Provision under which the application is filed	Under order VI rule 17 CPC
ii	Relief sought for	Amendment of written statement
iii	The date on which the application is filed	05.03.2024
iv	Number of the application	IA. No.XXX
v	The date on which the objections are filed by different opponents	29.05.2024
vi	The date on which the orders were passed on the said application	15.07.2024
vii	Stage of the proceedings	Defendant evidence

:: ORDERS ON I.A.No.XXX ::

1. This application is filed by defendant No.2 to amend his written statement by inserting narrate pleadings in Para No.13(a) and insertion of details of properties .
2. The application is supported with an affidavit sworn by defendant no.2. She has stated she is legal heir of deceased defendant no.1. After filling of the suit several developments are made related to the properties. Further she has stated plaintiff no2 has purchased a site out of joint family funds and in order to seek counter claim she required to insert those facts. Further vehicle no.KA-05-MF-5409 and KA-436742 are purchased by plaintiff no1 out of joint family funds. The said facts are not mentioned in the written statement. The suit is for partition and separate possession and it is required to include all the properties and those properties shall be divided. The nature of said properties whether as self acquired pr or not is a matter of trial and said amendment is

required for the adjudication of the case, if amendment is allowed the nature of the suit will not be changed. Hence she prayed to allow the application.

3. This application is resisted by plaintiff by filing objections contending that the defendant no.2 as sworn false affidavit and the application consists false reasons. This suit is filed in the year 2009 and when the matter is stood for arguments the defendant no.2 has filled the application with an intention to further drag the proceedings. Further the defendant no.2 has filed application to include property purchased by the plaintiff no.2 on 30.04.2020 and it is his self acquired property. The plaintiff is working as LIC agent and doing building contracts from last 15 years. The house is constructed two years back. The said properties is not acquired out of joint family fund. Further the plaintiff no.1 purchased Car bearing no KA-05-MF-5409 as second hand Car about 3 years back. The second hand goods carrier vehicle purchased about 4 years back. In that regard the plaintiff no.1 has availed loan at Central Bank of India. Therefore the plaintiffs seek dismissal of the application.

4. On going through the contentions of the parties the following points arises for consideration of this Court is as follows ;

POINTS

1. Whether the defendant no.2 has made out sufficient grounds to permit her to carryout amendment to her written statement as sought in the application?
2. What order?

5. Heard learned counsel for plaintiff and defendants. Perused the entire records on the application.
6. Upon on hearing the arguments and on perusal of the materials on record my answer to the above points is as under:-

Point No.I: In the Affirmative

Point No.II: As per final order
For the following:

::REASONS::

7. **POINT No.1:** This application is filed at the stage of defendant evidence on additional issues and the defendant no.2 sought for inclusion of properties alleged to be purchased by the plaintiff No.1 and 2 after filing of the suit out of joint family fund. The counsel for plaintiff filed copies of Bank statement of Central Bank of India and LIC particulars to show those properties are self acquired properties of plaintiff no.1 and 2. However the aspect of ascertaining facts as itself joint family property or self acquired properties is matter of trial. This suit is for partition and separate possession and defendant has raised contention that the suit is bad for non inclusion of all the joint family properties. As the right of chain among the plaintiffs and defendants has to be ascertained, it is necessary to permit the defendant no.2 to amend the written statement as prayed in the application. The inclusion of paragraph in written statement and description of properties in written statement does not change the nature of the suit. There is additional issue is framed with regard to non inclusion of all joint family

property. Without much going into merits of this case, at this stage it is not appropriate to give finding on the nature of properties and said facts required to be proved. In order to avoid multiplicity of the proceedings and to proper adjudication of the case it is necessary to allow the application. However delay caused to the plaintiff shall be compensated. ***Accordingly this Court answer Point no.1 in the Affirmative.***

8. **POINT No.2** :- In view of the finding on Point no.1, I proceed to pass the following ;

ORDER

I.A.No.XXX filed under Order VI Rule 17 of CPC filed by the plaintiff is allowed with cost of Rs 500/- payable to plaintiff.

The defendant no.2 is permitted to carryout the amendment in her written statement as prayed in the application.

(Dictated to the stenographer, transcribed by her, corrected by me and then pronounced in the open court today on this the 15th day of July, 2024)

(SANDESH V. BHANDARY)
Prl. Civil Judge & JMFC
Arasikere.