

KAHV300000772018



**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL  
JUDGE AND J.M.F.C AT HANGAL**

**Present:** Smt.Anitha, B.A. (Law) L.L.B.,  
Addl. Senior Civil Judge & JMFC.,  
Hangal.

**Dated this the 26<sup>th</sup> day of August 2021.**

**OS No.36/2018**

Plaintiff/Applicant: Anwarsab, W/o Modinasab Adura,  
Aged 56 years, Agriculturist,  
R/at Tiluvalli, Hangal Taluk,  
Haveri District.

-Vs-

Defendants/: 1. Jafarasab, S/o Gousamoddin Adura,  
Aged 67 years, Agriculturist,  
R/at Tiluvalli, Hangal Taluk,  
Haveri District.  
9. Allabhaksha,  
S/o Abdulkhadarsab Adura(poti),  
R/at Tiluvalli, Hangal Taluk,  
Haveri District.  
25. Rasulasab S/o Tajusab Adura,  
Aged 70 years, Agriculturist,  
R/at Tiluvalli, Hangal Taluk,  
Haveri District.

**ORDERS PASSED ON IA NO.17**

The learned counsel for the plaintiff filed IA No.17 under  
Order 6 Rule 17 R/w Section 151 of CPC seeking for

amendment of the plaint in the relief column by adding one relief.

2. The application is supported with the affidavit of the plaintiff stating that, the partition deeds produced by the defendants dated 31-08-1987 and 17-08-1993 are not binding on him and in the a said documents all the legal heirs of Tajusab have not been included and at the time of cross-examination of DW1, he has not given proper answer regarding the partition deeds. It prima-facie shows that, the said partition deeds are created one. The proposed amendment is just and necessary to decide this case. If the amendment is not allowed great hardship will be caused to the plaintiff. The proposed amendment will not change the nature of the suit and cause of action. Hence, prayed to allow the application.

3. The learned counsel for defendants No. 1, 9 and 25 filed the objection contending that, the application is not tenable in law and it is filed to prolong the proceedings. The application is filed to fill up the lacuna. The defendants have taken up the defence that, there was already a partition in the year of 1987 and 1993 which has been suppressed by the plaintiff and unless there is pleading, the proposed amendment cannot be allowed. Hence, prayed to dismiss the application with heavy costs.

4. Thereafter, heard arguments addressed by learned counsel for the plaintiff and defendants No.1, 9 and 25 and perused the case papers. After hearing the arguments and on perusal of the case papers, the points that arise for consideration are as hereunder:

### **POINTS**

1. Whether the proposed amendment is just and necessary to determine the real questions in controversy between the parties?
2. What order?

5. The findings of the above points are as hereunder:

Point No.1: In the affirmative.

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

### **REASONS**

6. **Point No.1:** The plaintiff filed the suit against the defendants for the relief of his 2/5<sup>th</sup> share in the suit schedule properties. The defendants have appeared through their respective counsels and the first defendant filed the written-statement which has been adopted by defendants No.3, 9 and 25. Defendant No.30 and defendant No.3(d) also filed the written-statement. It is the specific case of the plaintiff that, he has got the share in the suit schedule property. He has stated that, one Tajusab was propositus of the family and the suit schedule property has been granted to the propositus and himself and the defendants are the legal heirs of Tajusab

and there is no partition between them and he has got 2/5<sup>th</sup> share in the suit schedule property.

7. On the other-hand the 1<sup>st</sup> defendant in his written-statement has stated that, after the demise of Tajusab there was a registered partition deed taken place on 17-08-1993. As per the written-statement of defendant No.30 it is contended that, there was a registered partition deed dated 31-08-1987. It is very pertinent to note that, in this case the plaintiff has been examined as PW1 and two witnesses are also examined. On the other-hand defendants have also examined DW1 to DW3. When the case was posted for cross-examination of DW2 and DW3 this application came to be filed. The plaintiff has stated that, the partition deeds dated 31-08-1987 and 17-08-1993 are not at all binding upon him. It is necessary to mention that, the contesting defendant in the objection statement contended that, there was no pleading by the plaintiff to that effect and as such he could not maintain application for amendment. However, the amendment was sought on the basis of written-statement of defendants No.1 and 30. The first defendant filed the written-statement on 12-04-2017 itself and defendant No.30 filed the written-statement on 17-03-2018. As per the amended provision of Order 6 Rule 17 of CPC the parties to a litigation shall amend the pleading before the commencement of trial. In this case already the trial has been commenced and there

is already in ordinate delay in filing the application. It is stated that these documents are created documents and the plaintiff require to amend the plaint. Admittedly, the proposed amendment will not create any hardship to the defendants. Furthermore, there will not be any change in the cause of action and nature of the suit. Therefore this court comes to the conclusion that, the proposed amendment is just and necessary to determine the real questions in controversy between the parties. If application is not allowed, it will lead to multiplicity of proceedings. The delay caused by the plaintiff could be compensated by imposing heavy costs. Accordingly, point No.1 is answered in the affirmative.

8. **Point No.2:** In view of the reasons discussed above, this court proceeds to pass the following:

**ORDER**

IA No.17 filed by the plaintiff under Order 6 Rule 17 R/w Section 151 of IPC is hereby allowed with costs of Rs.500/-.

Consequently, the plaintiff is permitted amend the plaint as sought for.

(Dictated to the Stenographer, transcribed and computerized by her on the computer, transcript corrected and pronounced by me in the open court on this the 26<sup>th</sup> day of August 2021)

Sd/-

**(ANITHA)**

Addl Senior Civil Judge and JMFC,  
Hangal.