

**IN THE COURT OF SENIOR CIVIL JUDGE ALAND****PRESENT****SRI.GANAPATI GURUSIDDA BADAMI., B.A. LLB (Spl)  
SENIOR CIVIL JUDGE, ALAND;****DATED THIS 11<sup>th</sup> DAY OF JULY 2019****O.S. No.16/2015**

Shivalingappa S/o Shivanna Kalshetty; ....Plaintiff

V/s

Dattatraya S/o Shivanna Kalshetty &amp; others; ...Defendant/s

**ORDER ON I.A.No.7 UNDER ORDER 6 RULE 17 OF CPC**

Plaintiff has filed this application seeking amendment of plaint as prayed in the application.

2. In the accompanying affidavit of the plaintiff, he has stated that, defendants have filed their different written statements and some and substance of written statement of defendants is that, defendant No.6 has been adopted by the uncle by name Sharanappa S/o Chandrasha Kalashetty and land bearing R.S.No.68/3 had fallen to the share of Sharanappa has been inherited by the defendant No.6 which is false and defendants have not produced any documents about adoption. He has also stated that, it is contended by the defendants that, defendant No.6 has gifted away his property bearing R.S.No.68/3 measuring 17 acres 38 guntas in favour of Santoshi W/o Rajendra Kalashetty and it is also alleged

that, gift deed is document bearing No.3100/11-12 dated 23.01.2012, but infact, the said property has been inherited by the joint family of plaintiff and defendants after the death of Sharanappa S/o Chandrasha who died intestate and issue less. He has also stated that, the alleged gift deed is bogus document which has been created in collusion with defendant No.3 and 6 by the defendant No.1 to dupe his valuable right in the suit property and said document is not binding upon his share. He has stated that in the written statement, the defendants have contended that the property standing in the name of plaintiff in Gulbarga is purchased by joint family and denied that the said properties property of the plaintiff purchased out of his income from service. He has also stated that the defendants have made revolve claim and produced some documents showing gift and it has become necessary for him to seek the amendment of plaint and if amendment is not permitted, suit will be defective and this suit is at initial stage and written statement has been filed on 09-11-2015 and issued have not been framed. Therefore, he prayed to allow the application.

3. The defendants have filed objection to the application contending that the plaintiff wanted to introduce new statement of facts and plea after filing the written statement and such facts are not admissible to be incorporated in the plaint and proposed amendment in the prayer column seeking the relief of declaration is also not maintainable as the said relief of declaration has to be valued separately and court fee is to be paid under the provisions

of Karnataka Court Fees and Suits Valuation Act and Section 24(d) of said Act is not attractable. The proposed amendment has been introduced after defence taken by the defendants. The plaintiff has already submitted rejoinder to the written statement filed by the defendants and after filing rejoinder, the proposed amendment is not permissible. The proposed amendment will change the nature and character of the suit which is not permissible under law and as per the provisions of CPC, it is the duty of the plaintiff to seek proper and comprehensive relief at the time of filing the suit. Therefore, it is prayed to dismiss the application.

4. Heard the learned counsel for plaintiff on the application. The defendants have filed written argument on the application.

5. Materials on record disclose that, the plaintiff has filed this suit against defendants seeking the relief of partition and separate possession claiming that the suit properties are the joint family properties and he and defendants are in joint possession and enjoyment of suit properties and partition has not been taken place in the said properties. The defendants have filed their written statement and in the written statement filed by the defendant No.1 he has taken contention that the land bearing Sy.No.68/3 measuring 17 acres 13 guntas and Sy.No.337/2 measuring 07 acres 14 guntas of Madiyal Village are not the subject matter of the suit and they are not the joint family properties and sought the relief of declaration in

counter claim that Sy.No.68/3 and 337/2 are not the joint family properties. The defendant No.2 has also taken similar contention and sought the similar relief in the written statement and counter claim. The defendant No.3 has taken stand in his written statement and counter claim that the land bearing Sy.No.68/3 has been wrongly included in the suit schedule and the said property was not belonged to ancestor of plaintiff and defendants by name Shivanna and said property is standing in the name of Late Sharanappa who is brother of Shivanna and since he was not having any issues, he has transferred the said property to his adopted son by name Nagappa S/o Sharanappa Kalshetty and later on Nagappa has gifted the said property to the daughter of defendant No.1 under registered gift deed bearing No.3100/2011-12 dated 23-01-2012 and sought the relief of declaration in the counter claim that the said property is not joint family property and it is exclusive property of defendant No.2. The defendant No.4 has filed separate written statement and also sought the relief of declaration in the counter claim that the lands bearing Sy.No.68/3 and 337/2 are not joint family property. The defendant No.5 has also filed separate written statement and counter claim and taken contention that the land bearing Sy.No.68/3 and 337/2 are not joint family properties and to that effect sought the relief of the declaration. Similar written statement and counter claim has been filed by defendant No.5 and 6. The defendant No.7 taken contention that Sy.No.68/3 is not the joint family property and

it is belonged to Sharanappa and now the said property is belonged to defendant No.3. The similar stand has been taken by defendant No.8 and 9 in the written statement and counter claim. The plaintiff has denied alleged adoption by Sharanappa and wanted to seek amendment that the said document is sham and bogus document and not binding on his share and wanted to seek relief of declaration. He had also claimed the relief of declaration in the proposed amendment. It is the contention of the defendants that the proposed amendment will change the nature and character of suit and after defence taken by the defendants and on filing rejoinder to the counter claim, plaintiff wanted to amend the plaint which is not permissible under law. It is just and proper to go through the guiding principles for amendment of plaint. In a decision of **Hon'ble Supreme Court in State of AP & others V/s MS Pioneer Builders AP Civil Appeal No.6114/99, in Para No.20 it is held as under:-**

Principles governing amendment of pleadings are well-settled. Order VI Rule 17 C.P.C. deals with the amendment of pleadings and provides that the Court may at any stage of the proceedings allow either party to alter or amend pleadings in such a manner and on such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. It is trite that though an amendment cannot be claimed as a matter of right under all circumstances, yet the power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interest of justice. It is equally well-

settled that unless serious injustice or irreparable loss is likely to be caused to the other side, the Court should adopt liberal approach and not a hyper- technical approach particularly in a case where the other side can be compensated with costs. Dominant object to allow the amendment in the pleadings liberally is to avoid multiplicity of proceedings (See: L.J. Leach & Co. Ltd. & Anr. Vs.M/s. Jardine Skinner & Co. , Smt. Ganga Bai Vs. Vijay Kumar & Ors. and B.K. Narayana Pillai Vs. Parmeswaran Pillai & Anr. Nevertheless, one distinct cause of action cannot be substituted for another nor the subject-matter of the suit can be changed by means of an amendment. The following passage from the decision of the Privy Council in Ma Shwe Mya Vs. Maung Mo Hnaung , succinctly summarises the principle which may be kept in mind while dealing with the prayer for amendment of the pleadings:

"All rules of court are nothing but provisions intended to secure the proper administration of justice, and it is therefore essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised, but nonetheless no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change, by means of amendment, the subject-matter of the suit."

6. In another decision reported in In a decision reported in **AIR 2008 SC.2234 (a)** Wherein Hon'ble Supreme Court has held as under-

“O.6.R.17, proviso-Amendment of pleadings-:Liberal principles guide exercise of discretion in allowing amendment-But care should be taken to see that

injustice and prejudice of an irremediable character are not inflicted upon opposite party under pretense of amendment.

7. In one more decision reported in **AIR 2008 SC 2234**, Wherein the Hon'ble Supreme Court has held as under-

“O.6.R-17, Proviso-Amendment of pleadings-Due diligence –Suit for mandatory injunction restraining defendant from obstructing lane in suit property-Defendant seeking amendment of Written Statement to file partition agreement after closure of evidence- By filing same she wanted to retract what she pleaded in Written Statement -She failed to substantiate inordinate delay in filing application-Amendment cannot be allowed.”

8. In a decision reported in **Sushilkumar Jain V/S Manojkumar and another AIR 2009 SC 2544** in which it is held as under

Court adopts far more liberal approach than adopted for allowing the amendment of plaint.

9. In one more decision reported in **Surender Kumar Sharma V/S Makhan Singh 2009 AIR SCW 6131** wherein Hon'ble Supreme Court has held as under:

*Delay by itself is not a sufficient to reject the amendment. Court has to see whether by allowing belated amendment, real controversy between the*

*parties may be resolved and whether opposite party can be compensated by cost or otherwise.*

10. In one more decision reported in **South Konkan Distilleries V/S Prabhakar.G.Naik AIR 2009 SC 1177** wherein it is held by Honble Supreme Court as under:

Order 6 Rule 17CPC- Amendment of pleadings- Court to be liable- Amendment seeking to raise time barred claim, if serves cause of justice can be allowed.

11. In the light of the principles laid down in the above referred decisions and proposed amendment will not change the cause of action, nature of suit and relief already sought in the plaint and for complete and effective adjudication of the matter, the proposed amendment is necessary. The defendants are having right to file additional written statement to the amended plaint and they will not be put to any kind of loss or hardship and on the contrary, plaintiff will be put to loss and hardship. So, I feel it just and proper to permit the plaintiff to amend the plaint as prayed in the application. So, I proceed to pass the following:-

### **ORDER**

**IA No.7 under Order 6 Rule 17 of CPC is hereby allowed.**

**Plaintiff is hereby permitted to amend the plaint as prayed in the application.**

**Plaintiff shall carry out amendment and furnish amended plaint within 14 days from the date of order.**

(Typed by me on Laptop, corrected and then pronounced by me in open Court, on this the 11<sup>th</sup> day of July 2019)

**(GANAPATI GURUSIDDA BADAMI)**  
Senior Civil Judge, Aland.