

**IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC**  
**AT JEWARGI**

PRESENT: Sri. Sandeep A. Naik B.A., LL.B.,(Spl.)  
Senior Civil Judge & J.M.F.C.,  
Jewargi.

Dated This the 15<sup>th</sup> Day of March-2024

**ORIGINAL SUIT NO.46/2017**

**PLAINTIFF** : Smt. Dundamma W/o Ravi Teli,  
Age: 30 years, Occ: Private work,  
R/o Aheri, Tq: & Dist: Vijayapur.

.....(By. Sri.B.B., Advocate)

**V/s.**

**DEFENDANTS:**

1. Appasaheb @ Appasahebgouda  
S/o Rudragouda Biradar,  
Age: 55 years, Occ: Business,  
R/o Maganageri, Tq: Jewargi,  
Dist: Kalaburagi.
2. Smt. Laxmibai W/o Appasaheb  
@ Appasahebgouda Biradar,  
Age: 50 years, Occ: Household,  
R/o Bagalur, Tq: Sindagi, Dist: Viyapur.
3. Gollalappagouda S/o Rudragouda  
Biradar,  
Age: 58 years, Occ: Business,  
R/o Maganageri, Tq: Jewargi,  
Dist: Kalaburagi.
4. Smt. Siddamma D/o Gollalappagouda  
Biradar,  
Age: 32 years, Occ: Household,  
R/o C/o Dharmaraj, PWD Quarters,  
Shahapur-585223, Dist: Yadgiri.

.....(D1 & D2 By. Sri.S.P., Advocate)  
.....(D3 & D4 By. Sri.J.V.H., Advocate)

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**PARTIES TO I.A. NO.15**

**Applicant/** : Dundamma  
**Plaintiff**

V/S

**Opponent/** : Appasaheb @ Appasahebgouda and  
**Defendants** Others

i.	Provision under which the application is filed	U/o 6 Rule 17 of CPC
ii.	Relief sought for	Amendment of Plaintiff
iii.	The date on which the application is filed	12-04-2023
iv.	Number of the application	IA No.15
v.	The date of which the objections are filed by different opponents	Nil
vi.	The date on which the orders were passed on the said application	15-03-2024

**ORDER ON I.A No.15 FILED BY PLAINTIFF UNDER ORDER 6  
RULE 17 OF CPC.**

1. The plaintiff has filed this application to permit her to amend the plaint by adding the proposed amendment which is as hereunder:

**PROPOSED AMENDMENT**

"D. Land bearing Sy.No.129/5 measuring 3 acres 31 guntas situated at Malli village, Tq: Yadrami, Dist: Kalaburagi.

E. Land bearing Sy.No.304 measuring 17 acres 20 guntas situated at Maganagera village, Tq: Yadrami, Dist: Kalaburagi.

F. House No.1/182/1 situated at Maganagera village, Tq: Yadrami, Dist: Kalaburagi.

G. House No.1/182/2 situated at Maganagera village, Tq: Yadrami, Dist: Kalaburagi."

2. The plaintiff has sworn to the affidavit and stating that the proposed suit item number "D" to "G" are also joint family properties which are standing in the names of Nadagouda, Sridevi and Appasabgouda but their name is entered for and on behalf of joint family without there being any partition by metes and bounds. The proposed amendment is sought to be included in all the family properties. The suit was dismissed on the ground that she had not impleaded all the members of the family and included all the family properties. The plaintiff has preferred appeal in RFA No.20017/2019 on the file of High court of Karnataka at Kalaburagi. The same was allowed and matter has been remanded back giving her an opportunity to implead necessary parties and include family properties. The proposed amendment will not change the nature of suit as well as cause of action. Therefore, plaintiff prayed to allow the application.

3. On considering the IA affidavit the points that would arise for my consideration are as under:

1. Whether the I.A No.15 filed by the plaintiff U/o 6 Rule 17 of C.P.C., is deserves to be allowed and whether proposed amendment is necessary to adjudicate the real question of controversy in between the parties?

2. What Order?

4. Heard arguments on I.A.

5. The plaintiff counsel vehemently submitted that the proposed amendment is necessary to adjudicate the real matter in controversy between the parties. The proposed amendment does not change or alter the nature of the suit or cause of action. He further argued that Courts are having discretion to allow the application for amendment so that multiplicity of proceedings can be avoided and amendments which do not totally alter the character of an action should be readily granted. Further he argued that if it is necessary for the purpose of determining the real controversy then amendments can be allowed at any stage of proceedings. He further argued that Courts must not refuse bonafide, legitimate and necessary amendments in the pleading if no prejudice would cause to the other side. In the present case no prejudice would be caused to the defendants. Therefore, he prayed to allow the application.

6. My answer to the above points are as under:

Point No.1 : In the Affirmative

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

### **REASONS**

7. **Point No.1:-** Admittedly, the plaintiff has filed this suit for partition and separate possession and material available on record it reveals that the present suit was dismissed as per judgment and decree dated 25-04-2019. Aggrieved by the said judgment and decree the plaintiff has preferred RFA

No.200174/2019 and the Hon'ble High Court of Karnataka pleased to remitt back the matter and permitted the plaintiff to implead all the other family members in the suit and also to move necessary amendment application to bring all the joint family properties in a common hotchpot. The plaintiff by way of the present amendment is intending to implead other family properteis at item number D to G and plaintiff claims that said properties are also joint and ancestral properties of plaintiff and defendants. Therefore, proposed amendment is necessary to adjudicate real controversy in between the parties, Hence, plaintiff may be permitted to amend the paint.

8. It is well established principal of law that while dealing with amendment application the court has to consider two aspects, firstly the court has to consider does the proposed amendment is necessary to adjudicate the real controversy in between the parties, and second one is that the court has to consider does the proposed amendment would affect the right of other side. In order to amend plaint the plaintiff has to satisfy the above two aspects. On perusal of proposed amendment it can be said that proposed amendment is required for adjudication of real controversy in between the parties. Moreover, proposed amendment will not prejudice the right of defendants.

9. At this stage, it is useful to refer a decision reported in **2016(2) Karnataka L.J. 448, Bijith International builders Bangalore Vs. Dias Varghese C and others**, Wherein the Hon'ble High Court of Karnataka pleaded to held that courts to allow amendments for determining real questions in controversy provided not to cause injustice or prejudice to other side, purpose is to minimize litigation, however pleadings cannot be claimed as a

matter of right, party to prove inspite of due diligence could not raise plea before trial.

10. Admittedly this is the suit filed for Partition and separate possession in respect of the suit schedule properties. The proposed amendment appears to be necessary for adjudicating the real controversy in between the parties and if in case the proposed amendment is not permitted it will leads to multiplicity of proceedings and further it will be violation orders passed by the Hon'ble High Court of Karnataka in RFA No.200174/2019. More over the proposed amendment is appears to be a bonafide purpose which will assist the court in adjudicating the matter effectively. In case, this suit is disposed of without the proposed amendment then in future it will lead to complications which will result in multiplicity of proceedings.

11. The proposed amendment appears to be necessary for adjudicating the real controversy in between the parties and if in case the proposed amendment is not permitted it will leads to multiplicity of proceedings. The proposed amendment appears to be a bonafide purpose which will assist the court in adjudicating the matter effectively. In case, this suit is disposed off without the proposed amendment then in future it will lead to complications which will result in multiplicity of proceedings. Therefore, in order to adjudicate all the real controversy in between the parties the proposed amendment is necessary.

12. At this stage it is also useful refer a decision reported in **(2015)4 SCC 182** in between **Mount Mary Enterprises /Vs/ Jivratna Mede treat (P) Ltd.**, wherein it was held that

“ as per the provisions of order 6 Rule 17 of C.P.C, the amendment application should be normally granted unless by virtue of the amendment nature of the suit is change or some prejudice is caused to the defendant”.

13. In the present case also the proposed amendment does not affect or prejudice the right of defendants nor will it change nature of the suit. Moreover if the application is allowed and amendment is carried out the defendants will have opportunity to file additional written statement as such no prejudice will be caused to the defendants. Therefore, I am of the view that the plaintiff has made out sufficient grounds and proposed amendment is necessary to adjudicate the real question in controversy between the parties. Therefore, I am of the opinion that the proposed amendment application is deserves to be allowed. **Hence, I answered point No. 1 in the affirmative.**

14. **Point No.2** :- For the findings given in point No. 1, Hence, I proceed to pass the following:

**:: ORDER ::**

I.A.No.15 filed by plaintiff Under Order 6 rule 17 of C.P.C., is allowed.

The plaintiff is hereby permitted to carry out the necessary amendment in the plaint and to furnish amended plaint copy.

The plaintiff is further directed to pay court fee on additional reliefs claimed in the amendment.

No order as to cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and then pronounced by me in the Open Court on this 15<sup>th</sup> Day of March-2024).

**(Sandeep A. Naik)**  
**Senior Civil Judge Jewargi.,**