

**IN THE COURT OF THE CIVIL JUDGE & JMFC., KUSHALNAGAR
: PRESENT :**

**SMT. CHAITHRA L, BBM. LLB.,
Civil Judge & J.M.F.C.,
KUSHALNAGAR.**

DATED THIS THE 19th DAY OF December, 2025

O.S.82/2019

Smt. Lakshmi : Plaintiff

(By Sri. KSV.- Adv.,)

-V/s-

Sri Devappa and others : Defendants

**(D-1,3 to 6 By Sri DKT, D-2, 7 and 8
By Sri KCS Advs.)**

PARTIES TO I.A. No.XVI

Smt. Lakshmi : Applicant/ Plaintiff

-V/s-

Sri Devappa and others : Opponents/ Defendants

ORDERS ON I.A.No.XVI

The plaintiff has filed this application under Order 6 Rule 17 R/w Sec. 151 of C.P.C., to amend the plaint.

PROPOSED AMENDMENT

**Substitute in place of first sentence appearing in paragraph 2 of the
plaint as:**

‘ನನ್ನ ಮತ್ತು ಪ್ರತಿವಾದಿ 1 ಮತ್ತು 2 ಮತ್ತು ಪ್ರತಿವಾದಿ 3 ರ ಗಂಡ ಪೌತಿ ಚಿನ್ನಪ್ಪ
ಮತ್ತು ಪ್ರತಿವಾದಿ 7 ಮತ್ತು 8 ರವರ ತಾಯಿಯವರಾದ ಪೌತಿ ಲೀಲಾವತಿಯವರ ತಾಯಿ
ಸುಬ್ಬಮ್ಮರವರಾಗಿದ್ದು, ಸದರಿ ನಮ್ಮಗಳ ತಾಯಿಯವರ ಮೊದಲನೇ ಪತಿಯವರಾದ

ಸೊರಗಪ್ಪ ಆಲಿಯಾಸ್ ಕೊರಗಪ್ಪ ಇವರಿಗೆ ಒಂದನೇ ಪ್ರತಿವಾದಿ ಒಬ್ಬನೇ ಮಗನಾಗಿರುತ್ತಾರೆ. ನನ್ನ ತಾಯಿಯವರ ಮೊದಲನೇ ಗಂಡ ಪೌತರಾದ ನಂತರ ಅವರು ಸೋಮಪ್ಪ ಎಂಬವರೊಂದಿಗೆ ವಿವಾಹವಾಗಿದ್ದು, ಅವರಿಗೆ ಉಳಿದ ನಾವುಗಳು ಮಕ್ಕಳಾಗಿರುತ್ತೇವೆ.

**Substitute in place of first sentence appearing in paragraph 3 of the
plaint as :**

‘ಈ ದಾವೆಯ ಅನುಸೂಚಿಯಲ್ಲಿ ತೋರಿಸಿರುವ ಸ್ವತ್ತು ಮೇಲೆ ಹೇಳಿದ ನಮ್ಮಗಳ ತಾಯಿಯವರಾದ ಪೌತಿ ಸುಬ್ಬಮ್ಮ ಇವರಿಗೆ ಸರಕಾರದಿಂದ ಮಂಜೂರಾದ ಸ್ವತ್ತಾಗಿದ್ದು, ಸದರಿ ಅನುಸೂಚಿತ ಸ್ವತ್ತು ಅವರ ಸ್ವಯಾರ್ಜಿತ ಸ್ವತ್ತಾಗಿರುತ್ತದೆ. ಸದರಿ ನಮ್ಮ ತಾಯಿಯವರಾದ ಸುಬ್ಬಮ್ಮರವರು ಅವರ ಜೀವಿತ ಕಾಲದಲ್ಲಿ ಯಾವುದೇ ರೀತಿಯಲ್ಲಿ ಅನುಸೂಚಿತ ಸ್ವತ್ತನ್ನು ವಿಲೇವಾರಿ ಮಾಡದೆ ಮೃತರಾಗಿದ್ದು, ಸದರಿ ಅನುಸೂಚಿತ ಸ್ವತ್ತಿಗೆ ಮೇಲೆ ಹೇಳಿರುವ ಅವರ ಎಲ್ಲಾ ಮಕ್ಕಳು ಸಮಾನ ಹಕ್ಕುಳ್ಳವರಾಗಿರುತ್ತಾರೆ.’

2. In the accompanying affidavit, the plaintiff states that due to inadvertence and oversight, the name of the father of the parties was wrongly mentioned in the plaint. It is clarified that her mother, Subbamma, had two marriages—her first husband, Soragappa @ Koragappa, having predeceased her, and thereafter she married Somappa. The plaintiff's mother died intestate, leaving behind her legal heirs, but these facts were not clearly pleaded in the plaint.

3. The proposed amendment is sought to clarify the ambiguity and place the true facts before this Hon'ble Court. The mistake is neither intentional nor deliberate and requires rectification. The amendment is necessary for proper adjudication, does not change the nature or cause of the suit, and will not prejudice the defendants, whereas denial would cause prejudice to the plaintiff. The plaintiff claims partition of the suit schedule property along with the house situated therein.

4. The defendant has denied the averments in the application affidavit and contended that the suit is of the year 2019 and the present I.A. is filed at a highly belated stage, after closure of the plaintiff's evidence and after completion

of the chief-examination of D.W.1, and hence is not maintainable. The defendant further contends that the averments in para-2 of the plaint were admitted in para-2 of the written statement, and the plaintiff is estopped from seeking amendment after having opposed I.A. No.13 filed by the defendant for amendment of the written statement.

5. It is further stated that the plaintiff reiterated the same pleadings in her chief-examination and cannot now resile from the same in view of the doctrine of estoppel under Section 115 of the Evidence Act (Section 121 of BSA, 2023). The present application is an afterthought, filed only to delay the proceedings, and is liable to be rejected.

6. Heard both side. Perused the materials on record.

7. On the basis of said pleadings, the following points arise for consideration ;

1. Whether Plaintiff has made out sufficient grounds to allow this application under Order 6 Rule 17 of C.P.C. ?

2. What order?

8. Finding on the above points are as follows;

Point No.1:- In the partly affirmative

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

-::REASONS:-

9. Point No.1:-The plaintiff seeks amendment of the plaint by substituting the first sentence in paragraph No.2 and the first sentence in paragraph No.3 of the plaint. So far as the proposed substitution to paragraph No.2 is concerned, the same relates exclusively to clarification of genealogy and

family relationship. The proposed amendment discloses the correct lineage of Smt. Subbamma, her two marriages, and the relationship between the plaintiff and defendants. In a suit for partition, disclosure of true and complete genealogy is fundamental. Though the genealogy was not clearly stated in the original pleadings, the true family tree has emerged during the course of trial from the admissions made by the plaintiff in cross-examination. The rejection of the earlier application filed by Defendant No.1 and Defendant Nos.3 to 6 seeking amendment of genealogy cannot be a ground to deny the present request of the plaintiff. When the plaintiff herself comes forward to place the correct genealogy on record, such amendment deserves to be allowed, notwithstanding that the application is filed during trial. The proposed amendment to paragraph No.2 does not alter the nature of the suit, does not withdraw any admission, and is necessary for proper adjudication of the dispute. **Hence, the proposed amendment to paragraph No.2 is liable to be allowed.**

10. However, with regard to the proposed substitution to paragraph No.3, the plaintiff originally pleaded that the suit schedule property is joint family property. By the proposed amendment, the plaintiff now seeks to plead that the suit property is the self-acquired property of her mother, Smt. Subbamma, and further asserts that she died intestate without making any disposition and that all children are equally entitled. This proposed pleading directly contradicts the earlier admission regarding the nature of the property and seeks to change the very foundation of the suit after commencement of trial. The entire plaint averments do not disclose any plea regarding disposition or non-disposition of the suit property by Smt. Subbamma. The assertion that she died without making any disposition appears to be an afterthought .

11. The proposed substituted paragraph No.3 cannot be dissected. While part of the proposed amendment seeks to take away the earlier

admission that the property is joint family property, the remaining part operates as a defence to the Will set up by the defendants. Permitting such substitution would allow the plaintiff to withdraw material admissions and reshape her case to meet the defence, which is impermissible in law, particularly after commencement of trial. Accordingly, the proposed amendment to paragraph No.2 of the plaint is **allowed**, and the proposed amendment to paragraph No.3 of the plaint is **rejected**. **With these observation, this court answers point No.1 in the partly affirmative.**

12. Point No.2: For the aforesaid reasons on point No.1, this court proceeds to pass the following order:

ORDER

The application filed by the plaintiff seeking amendment of the plaint is **partly allowed**.

The plaintiff is permitted to amend the plaint **only to the limited extent of incorporating the correct family tree.**

The prayer seeking substitution of pleadings relating to the nature of the suit schedule properties and alleged non-disposition by Smt. Subbamma is **rejected**.

(Dictated to the Stenographer directly on computer , transcribed by her, corrected and signed by me and then pronounced in open court on 19th day of December 2025).

Sd/xxx

(Chaithra L.)

**Civil Judge & J.M.F.C
Kushalnagar.**