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KAKL200018762015



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

PRESENT:

SMT. SUKEETA S. HADLI,

B.B.A.,LL.B.,(Hons)

PRL., CIVIL JUDGE & JMFC., BANGARPET.

O.S.NO.283/2015

DATED THIS 15TH DAY OF APRIL 2026

PLAINTIFF/S : **H.D.Venkateshappa.,**

(Rep. by Sri.**S.K.**, Advocate)

-V/S-

DEFENDANT/S: **Thimmarayappa.,**

(Rep. by Sri.**K.V.S.**, Advocate)

PARTIES TO I.A.NO.VII

Applicant/
Plaintiff:

Thimmarayappa

-V/S-

Opponent/
Defendants:

H.D.Venkateshappa

ORDERS ON I.A.NO.VII

The present I.A is filed by the defendant under Order 6 Rules 17 of the Code of Civil Procedure seeking an order of this Court to permit to amend the written statement in the interest of justice and law.

2. In the affidavit accompanying to the application, it is stated that the present suit has been filed by the plaintiff seeking the relief of partition and separate possession. It is stated that he has appearing through his advocate and he has filed his written statement. Issues framed by this Court and the matter posted for evidence. It is stated that after completion of plaintiff evidence and while preparing for his evidence, he traced certain documents in his house and on verification he realized that suit schedule property item Nos. 1 to 3 on effect upon purchased by him under separate registered sale deeds and that the said properties are self-acquired properties.

3. The defendant has further stated that by oversight in paragraph No.8 of his written statement he has pleaded that

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item Nos. 2 and 3 were in possession of one Dasappa during his life time, though according to him those properties were self-acquired has been purchased by him and such properties were never joint family properties. It is averred that he has not clearly pleaded from whom he has purchased item Nos.1 to 3 in suit schedule property, and therefore, he seeks amendment of written statement so as to place the relevant facts. Before the Court.

4. The affidavit further discloses that there is another house property at Hulibele Village, which according to the defendant originally belonged to the join family and was originally partitioned between the parties to the suit, each having obtained half share therein. It is contended that since the property has not been included, the suit for partition is not maintainable in the present form.

5. The defendant asserts that the proposed amendment does not alter the nature of his defence, that no prejudice will be caused to the plaintiff if the IA is allowed. On these grounds he

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prays to allow the application.

6. The plaintiff has filed detailed objections opposing the application. The substance of the objections is that the application is false, belated, and not maintainable either on facts or in law. According to the plaintiff, the defendant has filed the application only with an intention to protract the proceedings after conclusion of plaintiff's evidence and when the matter was posted for defendant's further chief-examination.

7. It is further contended that the plaint averments may be treated as part and parcel of the objections. The plaintiff has specifically contended that the defendant is seeking amendment of his own written statement after plaintiff has already adduced evidence on the basis of the admitted pleadings, and that such amendment would enable the defendant to withdraw admissions already made in the written statement. According to the plaintiff, admitted facts cannot be permitted to be displaced by way of amendment.

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8. The plaintiff has also contended that if the amendment is allowed, the nature of the suit would be changed, a new case would be introduced, and serious prejudice would be caused to the plaintiff. It is urged that the defendant cannot be permitted to take a different and inconsistent stand contrary to his earlier written statement and that no sufficient cause has been shown for seeking such amendment at this advanced stage of the proceedings.

9. Heard the learned counsel for the plaintiff and the learned counsel for the defendant. Perused the application, affidavit, objections, and the proposed amendment.

10. The following points arise for determination:-

1. Whether the defendant has made out sufficient grounds to permit amendment of the written statement under Order VI Rule 17 of CPC?
2. Whether the proposed amendment is necessary for determining the real questions in controversy between the parties?
3. Whether allowing the amendment would

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cause such prejudice to the plaintiff as cannot be compensated by granting an opportunity to meet the amended defence?

4. What order?

11. After hearing the arguments and on considering the relevant materials on record, my findings on the above points are hereunder:-

Point No.1	:	In the Affirmative.
Point No.2	:	In the Affirmative.
Point No.3	:	In the Negative.
Point No.4	:	As per final order for the following;

REASONS

12. Point Nos.1 to 3:- They are taken together for common discussion to avoid repetition of facts and documents.

13. Order VI Rule 17 CPC empowers the Court, at any stage of the proceedings, to allow either party to alter or amend his pleadings in such manner and on such terms as

may be just, and mandates that amendments necessary for determining the real questions in controversy should be allowed. The proviso lays down that once trial has commenced, such amendment shall not ordinarily be allowed unless the Court concludes that despite due diligence the party could not have raised the matter earlier.

14. It is well settled that while considering an application for amendment, the Court has to examine whether the amendment is necessary for effective adjudication of the dispute, whether it is bona fide, whether it would cause irreparable prejudice to the opposite party, and whether refusal of amendment would lead to injustice or multiplicity of proceedings.

15. It is equally well settled that an amendment of a written statement stands on a somewhat different footing from amendment of a plaint. In the case of written statement, the Court adopts a more liberal approach, since addition, substitution, or elaboration of a defence does not ordinarily stand on the same footing as substitution of a cause of action

in a plaint. It has also been recognized that inconsistent or alternative pleas in a written statement may, in appropriate cases, be permitted, subject of course to the limitation that a clear and unequivocal admission causing irretrievable prejudice to the opposite side should not be allowed to be completely withdrawn.

16. In the case on hand, the defendant seeks to amend the written statement mainly on two aspects. Firstly, he wants to plead in greater detail that suit schedule item Nos.1 to 3 were purchased by him under registered sale deeds from specified vendors and that they are his self-acquired properties. Secondly, he seeks to raise a plea regarding another house property said to have been orally partitioned earlier and not included in the suit schedule.

17. On careful perusal of the original defence as reflected in the proposed amendment and supporting affidavit, this Court is of the opinion that the defendant is essentially attempting to elaborate and better particularize his defence regarding the nature of the suit properties and the

maintainability of the suit for partial partition. Merely because such particulars are sought to be introduced at a later stage, it does not automatically follow that the amendment must be rejected. The real controversy in a partition suit is the nature of the properties, the shares of the parties, and whether all necessary properties are included. Therefore, pleadings touching upon self-acquisition, prior oral partition, and omission of an alleged joint family property are matters directly connected with the core controversy and their adjudication would assist the Court in effectively deciding the suit.

18. The plaintiff has strongly contended that the amendment is belated and that it seeks to retract admissions. This objection has been carefully considered. However, on the present material, it cannot be said that the proposed amendment completely dislodges the plaintiff from a clear, conscious, and unequivocal admission on the basis of which an accrued right has crystallized in his favour. The amendment appears more in the nature of clarification,

correction of earlier pleading said to have been made by oversight, and furnishing better particulars of the defence. Even where some inconsistency is introduced in a written statement, the law leans in favour of permitting the defendant to place his full defence before the Court, provided the opposite party is not denied a fair opportunity to meet the same.

19. So far as delay is concerned, no doubt the application is filed after commencement of trial and after completion of plaintiff's evidence. Therefore, the proviso to Order VI Rule 17 CPC is attracted. At the same time, the defendant has offered an explanation that while preparing for his evidence and on search of documents in his house, he traced sale deeds and noticed the need to correct and amplify his pleadings. Whether such explanation is ultimately sufficient evidence of due diligence is to be assessed in the context of justice between the parties. In the present case, having regard to the nature of the suit being one for partition and separate possession, and having regard to the fact that

refusal to permit the amendment may result in incomplete adjudication of the nature of the suit properties and may generate further litigation, this Court is of the view that the ends of justice require a liberal approach.

20. The plaintiff's apprehension of prejudice is also not of such character as cannot be remedied. Any inconvenience caused to the plaintiff can be compensated by granting liberty to file additional pleadings, by recalling or further cross-examining witnesses if necessary, and by awarding appropriate costs. No irreparable prejudice is made out. On the contrary, if the amendment is refused and the defendant is shut out from raising his complete defence relating to the character of the properties and the plea of partial partition, the controversy may not be effectively and finally resolved.

21. The proposed amendment also does not alter the nature of the suit itself. The suit remains one for partition and separate possession. What is sought to be added is only the defendant's fuller defence regarding the status of certain suit items and the alleged omission of another property. Such

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amendment cannot be said to transform the suit into a wholly new and inconsistent proceeding. Rather, it would enable the Court to decide the actual dispute between the parties on merits.

22. For all these reasons, this Court is satisfied that the amendment sought is necessary for proper and effective adjudication of the real controversy between the parties, that the same deserves to be allowed in the interest of justice, and that the plaintiff can be sufficiently protected by granting opportunity to meet the amended case and by imposing costs. **Accordingly, Point Nos.1 and 2 are answered in the Affirmative and Point No.3 in the Negative.**

23. Point No.4:- In view of the discussion made above, I proceed to pass the following:-

ORDER

The application filed by the defendant under Order VI Rule 17 read with Section 151 of CPC is hereby allowed, subject to

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payment of costs of Rs.1,000/- to the plaintiff.

The defendant is permitted to carry out amendment of the written statement strictly in terms of the proposed amendment annexed to the application.

*(Dictated to the **Stenographer**, typed by her on computer and corrected by me, then pronounced in the open Court on this day **15th day of April 2026**)*

SD/-
Prl. Civil Judge and J.M.F.C.,
Bangarpet.