

**ORDERS ON I.A.NO.22**

This is an application filed by the defendants No.3, 5 and 6 seeking the permission of this Court to amend the plaint as per the application schedule.

2. The application is supported with the affidavit of the defendant No.5. In his affidavit, he has stated that in Para 12 of the written statement, he has clearly stated that the plaintiff and the defendant No.2 have purchased certain properties out of the joint family income and they have also prayed this Court that the particulars will be given at the later stage. Now, the case has been posted for the cross-examination of the plaintiff and his counsel as advised him that the particulars should be given to the Court by way of amendment. Hence, by way of clarification, the defendant No.3, 5 and 6 are intending to give particulars of the properties purchased by the plaintiff and the defendant No.2 by seeking permission to include those properties in the written statement by adding A and B schedule. Hence, it is just and necessary to permit this defendant No.3, 5 and 6 to plead in the body of the written statement by way of clarification and also to permit him to add A and B schedule in his written statement as prayed for. The amendment sought for does not alter the nature of the case or cause of action. Further, it is stated that the amendment sought for does not prejudice the case of the plaintiff or 2<sup>nd</sup> defendant. Further, the amendment sought will help the Court to come to a fair and just conclusion and also to dispose the case effectively by giving correct findings on the issues involved in the present case. If

the application is not allowed, there will be prejudice and great injustice will be caused to the defendant No.3, 5 and 6. Hence, it is prayed to allow the application.

3. On the other hand, the learned counsel for the plaintiff has filed his statement of objections and denied all the contentions taken in the application. It is stated that the application filed by the defendant No.5 is not at all maintainable either in law or on facts. It is stated that the defendant No.5 has sworn to false things in the affidavit and he has not made out any reasonable grounds to allow this I.A. Infact, the defendant No.5 has suppressed the true and material facts. The amendment sought is contrary and contradict to the pleadings of the parties i.e., the defense of the defendant No.5. The defendant No.5 in his written statement has taken a specific defense that there is already partition took place in their family. But, by way of amendment, the defendant No.5 wants to add some properties to claim the partition within the suit properties. Thus, the defendant No.5 contradicts his own defense. which is not permissible under law. The properties intended to be included in the suit are recently purchased by the plaintiff out of his own earnings and they are self acquired properties and the defendant No.5 has illegally and intentionally intends to add these properties. Hence, the application is not maintainable By stating these grounds, it is prayed for rejection of the application.

4. Heard the arguments on both the sides.

5. The following points would arise for my consideration:-

1) Whether the defendants No.3, 5 and 6 have made out grounds to allow the application and thereby permit them to amend the written statement as prayed in the I.A.?

2) What order?

6. My findings to the above said points are as follows:-

Point No.1 :- In the **affirmative**.

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

### **REASONS**

7. **Point No.1** :- This is a suit filed by the plaintiff seeking the relief of partition and separate possession in respect of the suit properties. It is to be noted that the relationship between the plaintiff and the defendants No.1 to 6 is not under dispute. The plaintiff has taken a specific contention that the suit properties are all the ancestral and joint family properties of the plaintiff and the defendants No.1 to 6 and as such, he has come up with the present suit for partition and separate possession in respect of his respective shares. After filing the suit, these defendants No.2, 5 and 6 have entered their appearance and filed their written statement. In the written statement, these defendants have admitted the relationship as true and correct. However, they have

denied the right and share of the plaintiff in respect of the suit schedule properties. These defendants have admitted that there was no division in their ancestral and joint family properties. However, they have taken several contentions in respect of the suit schedule properties. Based on all these things, this Court has framed the issues and already the plaintiff has been examined as the PW.1 and now the case is posted for cross-examination of the PW.1. At this juncture, the present application came to be filed by the defendants No.3, 5 and 6. It is to be noted that these defendants No.3, 5 and 6 have taken a specific contention in their written statement that the suit item No.13 to 16 are the self acquired properties of the defendant No.6 and the suit item No.17 to 24 are the self acquired properties of the defendant No.7. These defendants have taken a specific contention that neither the plaintiff nor the defendants No.1 to 4 have any right, title, interest or possession over the suit item No.13 to 24. They have taken a specific contention that the said properties are not the joint family properties. However, when the case was posted for cross-examination of the PW.1, these defendants have come up with the present application.

8. On going through the nature of the amendment sought in the present application, it is very clear that the defendants No.3, 5 and 6 are intending to put forth some averments in the written statement in respect of the A and B schedule properties. In this regard, they have taken a specific contention that the said suit A and B schedule properties have been purchased by the plaintiff and

the defendant No.2 and as such, there is a need to add those schedule properties in the written statement of the defendants No.3, 5 and 6. Infact, the plaintiff has specifically opposed this application on the ground that the contention of the defendants No.3, 5 and 6 is not maintainable since, they are going against the defense taken in the written statement. According to the plaintiff, the application has been filed only to drag the proceedings and the same cannot be entertain at highly belated state. It is to be noted that the contention of the defendants No.3, 5 and 6 is that the written statement schedule A and B properties are said to have been purchased by the plaintiff and the defendant No.2 and as such, there is a need to add them in the written statement filed by the defendants No.3, 5 and 6. In this regard, it is well established principle of law that the defendants can take inconsistent pleas in their written statement. Whatever the contention has been taken by the defendants has to be proved by them only. Further, the plaintiff will get opportunity along with other defendants to challenge the version of the defendants No.3, 5 and 6. It is to be noted that the adding of the proposed amendment will definitely ensure that the entire controversies between the parties will be settled and the rights of the parties will be adjudicated by the Court. In order to ensure the fair adjudication of the case, it is just and necessary to add the proposed amendment in the written statement and allow the defendants No.3, 5 and 6 to add the proposed amendment in the written statement. Further, it is also true that the plaintiff and the other defendants will get an

opportunity to contest the matter by leading their side further evidence. By considering all these facts, I hold that the application filed by the defendants No.3, 5 and 6 deserves to be allowed. However, keeping in view of the delay caused in bringing the proposed amendment, the application deserves to be allowed with heavy costs. Hence, I answer this point in the **affirmative**.

9. **Point No.2** :- As per the discussion made on Point No.1, this Court has come to the conclusion that the defendants No.3, 5 and 6 have made out grounds to allow the application and thereby permit them to amend the written statement as prayed for. Hence, I proceed to pass the following:-

**ORDER**

The application filed U/o.6 Rule 17 of CPC filed by the defendants No.1, 3 and 6 is allowed on payment of cost of Rs.500/-, which is payable to the plaintiff.

The defendants No.1, 3 and 6 are permitted to amend the written statement as prayed for.

Call on for payment of costs, amendment of the written statement and to submit the amended written statement by:-  
05.12.2017.

Senior Civil Judge,  
Maddur.

