

**IN THE COURT OF THE ADDL. CIVIL JUDGE & JMFC.,  
NAGAMANGALA**

Dated this 1<sup>st</sup> day of March 2025

Present

**Sri. KP.SIDDAPPAJI** B.A., LL.B.  
Addl. Civil Judge & JMFC.,  
Nagamangala.

**Original Suit No.262/2014**

**Plaintiffs** : Sri Shivaraju and another.

**V/s.**

**Defendants** : Sri Narasimhaiah and others.

**RANK OF THE PARTIES ON IA No.VIII**

**Applicant/**

**Defendant No:5** : Smt. Kamalamma  
(By Sri. NSR Advocate)

**V/s.**

**Opponents/  
Plaintiffs**

: Sri Shivaraju and another.  
(By Sri. SLG Advocate)

\* \* \* \* \*

**ORDER ON IA No.VIII**

The learned counsel for Defendant No.1,2 and 5 has filed IA No.VIII under Order 6 Rule 17 of CPC, for seeking permission to amend the plaint.

2. The Defendant No.5 has sworn to an affidavit in support of the application, wherein she has stated that, the Plaintiffs have filed the above suit against her and other defendants for partition and separate possession in respect of the suit schedule properties. The averments that are made in the written statement may

kindly be treated as part and parcel of this affidavit. The above case is posted for cross examination of PW.1. At the time of filing the addl. Written statement, she unable to obtain material documents which are necessary to prove her possession. When she discussed with her advocate about the same, he told her that, it is very necessary to amend the written statement to prove her case. It is very necessary to amend the same. Hence this application for amend in the above suit. The said reason is not an intentional one. But the above said bonafide reason. This amendment has to be made for perfect adjudication of this suit. If this amendment is made to the written statement that is not affect the pleadings. So it is just and necessary to amend the written statement in this suit. She will be put too much of hardship, irreparable loss and great injustice if her application is not allowed. On the other hand no prejudice of any kind will be caused to the other side if her application is allowed. With these reasons she has prayed to allow the IA. XIII.

3. The learned counsel for the Plaintiffs has filed objection to the application, wherein he has contended that the application filed by the Plaintiff is not maintainable either under law or on facts. The Defendants have sworn the false affidavit, averments of the affidavit are all false. The application filed by the Defendants is on order to drag on the proceedings only. The application filed by the Defendants with an intention to harass the Plaintiff. The suit property item No.3 is the ancestral property of the Plaintiff and Defendants. As per law pleading can not be amended when its effect is to withdraw the earlier

admission of a party. After amendment of the Plaint this application is not maintainable, since the Defendant has not at all chose or filed rejoinder application, without filed rejoinder this application is not maintainable. Viewed from any angle, the application filed by the Defendants is not maintainable it is liable to be dismissed. If this application is not allowed no harm caused to the Defendants. With these reasons sought for dismissed the IA.NoVIII.

4. Heard the learned counsels appearing for parties and perused the materials on record.

5. Now the following points arise for considerations of this court are

1. Whether IA No XIII filed by the Defendant No.5 U/o 6 Rule 17 of CPC is deserved to be allowed ?
2. What order?

6. The findings of this court on the above said points are as under :

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

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

### **REASONS**

7. **Point No.1** : This is the case filed by the Plaintiffs against the Defendants for the relief of partition and separate possession in respect of the suit schedule properties. When matter was at the stage of cross of PW-1, this present application has been filed for seeking amendment of written statement.

8. The Learned counsel for Defendants submitted that, during pendency of this suit the plaintiffs have implead the house property bearing assessment No.1165/1311 measuring 603.0 feet situated at K.R. Pete, Old Mysuru road as suit schedule item No.3 property. In fact, the said property is stands in the name of Sridharamurthy and Sri. H. Thimmaiah, not in the name of Smt. Kamamma. The plaintiffs have concocted and created document in respect of suit schedule item No.3 property. Hence, the proposed amendment is very essential to adjudicate the matter finally. If the applicant is allowed no cause hardship, injury and injustice to plaintiffs. If the applicant is not allowed then the defendants will put great hardship and injustice. Hence, he prayed to allow the application.

9. Per contra the learned counsel for plaintiffs submitted that the suit schedule item No.3 property is the ancestral property of the plaintiffs and defendants. The Plaintiffs have filed this application with an intention to drag on the proceedings and to harass the plaintiffs. Hence, the application filed by the defendant No.5 is not maintainable. Hence, he has prayed to dismiss the application.

10. In light of the argument canvassed by the counsels for the both the parties, this court has carefully perused the material on record. Plaintiffs have filed this suit against the defendants seeking the relief of partition and separate possession in respect of the suit schedule properties. During the pendency of

the suit the plaintiffs have added suit schedule item No.3 property as stated that the said property is the ancestral and joint family property of the plaintiffs and defendants, same is standing in the name of Smt. Kamalamma. In the proposed amendment the defendant No.5 as contended that the suit schedule item No.3 property is not stands in the name of Smt. Kamalamma. In fact, the said property is stands in the name of one Sri. Sridharamurthy and Sri. H. Thimmaiah. The plaintiffs have concocted and created the forged documents in respect of suit schedule item No.3 property.

11. Though as per proviso of Order 6 Rule 17 of CPC, after commencement of the trial the amendment cannot be allowed but in present case, during the pendency of the suit the plaintiffs have added suit schedule item No.3 property in the plaint. Defendant No.5 has sought for amendment subsequent event, hence in order to meet the ends of justice, this Court is empowered to allow the amendment for complete adjudication of the dispute between the parties. In order to adjudicate the matter effectively and completely, the proposed amendment is necessary. Whether suit schedule item No.3 property is ancestral property of the plaintiffs and defendants or not and the plaintiffs have created the documents in respect of suit schedule item No.3 property or not, it is required full fledged trial. If the proposed amendment is allowed, then it will no way affect the interest of the plaintiffs and on the contrary it would help the Court to adjudicate the matter effectively. For which, the present application

filed by the defendant No.5 is deserved to be allowed. Hence, point no.1 is answered in the **affirmative**

12. **Point No.2**: For the aforesaid discussion on Point No.1, this Court proceeds to pass the following:

**ORDER**

IA No. VIII filed by the defendant No.5 under order VI Rule 17 of CPC, is hereby allowed.

Defendant No.5 is hereby permitted to amend the written statement as sought in the said application.

[Dictated to the stenographer through on-line computer, typed by him, corrected and then pronounced by me in the open court on this day of 1<sup>st</sup> March, 2025]

**(KP SIDDAPPAJI)**  
Addl. Civil Judge & JMFC.,  
Nagamangala.