

**KAMS080003842014**



O.S./137/2014

**BEFORE THE MOTOR ACCIDENTS CLAIMS TRIBUNAL  
AT MYSURU  
(IN THE COURT OF ADDITIONAL SMALL CAUSES AND  
SENIOR CIVIL JUDGE, AT MYSURU)**

**PRESENT**

**Smt. PRATHIBHA D.S**

**B.A., LL.B.**

**JUDGE, ADDITIONAL COURT OF SMALL CAUSES  
AS A PRESIDING OFFICER,  
MOTOR ACCIDENTS CLAIMS TRIBUNAL, MYSURU.**

**DATED THIS THE 14<sup>th</sup> DAY OF AUGUST 2025**

Plaintiff/s : Drakshayini @ Vijayalakshmi and others

**//V/s//**

Defendant/s : Sri.B.M Mallesh and another

**I.A.No.XVII**

Applicant/: Sri.B.M Mallesha.....Defendant No.1

**//V/s//**

Opponent: Drakshayini @ Vijayalakshmi and others  
..... Plaintiffs

**ORDER ON I.A.NO. XVII**

This is the application filed by the applicant/defendant No.1 under order VI rule 17 r/w sec.151 of C.P.C seeking an amendment of written statement as mentioned in the application.

**2.** In the affidavit annexed to the application the applicant/defendant No.1 submitted that the plaintiffs have filed the present suit against the defendants for the relief of partition and separate possession. Defendant No.1 has filed written statement in resisting the suit of the plaintiffs. The defence matrix put forth may kindly be treated as part and parcel of this affidavit. The subject matter of the amendment amplifies additional defence matrix. Subject matter of proposed amendment has bearing to the matter in issue. Vital adjudication accomplished pertaining to the property

in question is the core matter of proposed amendment. The proposed amendment is vital and cogent for the adjudication of questions in issue as well as the suit. The subject matter of proposed amendment encompasses addition of defence matrix. The contemplated amendment circumscribes vital set of defence that goes to the root of the matter. The proposed amendment is vital and cogent to defend the suit of the plaintiffs. The same assist the court in arriving at just and fair conclusion.

**3.** It is further contended that, inspite of exercising his due diligence, he could not present the proposed amendment in the form of defence much earlier to this day. The same was not intentional but bonafide. The commencement of trial does not bar the adjudication of his application in the present of cogent explanation being put forth for due consideration of the court. The principles that govern the amendment of written statement are on entirely different footing to that of the principles that govern amendment of plaint. That earlier non introduction of the proposed amendments did not result in accrual of right to the other side. By allowing the same the plaintiffs will not be jeopardized. On the other hand, he will be put to hardship and injury by rejection. Hence, this application.

**4.** On the other hand, the plaintiffs filed objection and contended that, that the very application filed by the defendants is not maintainable either in law or on facts and thus liable to be dismissed in limine. There is no locus standii to maintain the application as it is devoid of merits. The only motive that can be gathered by the plaintiff is that the deliberate attempt on the part of the defendant in dragging on the matter without letting it to reach its logical end. The affidavit accompanying the application is a mute point for the designs of the defendant. To avoid repetitions of the facts, the averments made in the plaint may be kindly taken as part and parcel of this statement also.

**5.** It is further submitted that, the defendant has made many attempts to drag on the matter on one or the other pretext. The matter has already seen 16 applications earlier, and the one under discussion is the 17<sup>th</sup> one. The contents which the 1<sup>st</sup> defendant claims to be incorporated in his pleadings of his written statement is unwarranted and uncalled for. Just an application with documents as exhibits in his evidence could have done the job. And that too when the matter was posed for evidence on his side but was taken as nil since he has not appeared before the court to adduce evidence and now he has come out with the

application to further delay the matter. The matter has already seen the best part of 14 years and yet no light at the end of tunnel is seen.

**6.** It is further submitted that, the defendants are hell bent to drag the matter on one or the other pretext, and it is never ending. The court may be pleased to nip his evil intentions in the bud itself and proceed with the matter to close the same expediently. The excuses given for such an amendment is unconvincing and vague. The application does not merit any consideration as it is filed with malafide intentions laced with the ulterior motive of delaying the matter. Even the limitation factor is not in favour of the 1<sup>st</sup> defendant as the amendment as sought by him is highly belated and hopelessly delayed without any acceptable reasoning. The very affidavit is repetitive and kept on narrating the same old things again and again, if the 1<sup>st</sup> is not restrained with punitive cost he will keep on repeating the same time and again. If this application is allowed the plaintiffs will suffer irreparable loss, hardship and injury that cannot be compensated in terms of money, on the other hand, if the application is rejected the defendants will not suffer any loss, hardship and injury that cannot be compensated in terms of money and prays to reject the

application.

**7.** Heard both side. Perused the materials on record. Counsel for the defendant No.1 relied upon the following rulings;

1. 2023 (2) CCC 275 (SC) between Ganesh Prasad vs Rajeshwar Prasad and Ors.
2. AIR 2009 SUPREME COURT 2544 between Sushil Kumar Jain vs Manoj Kumar and ano.
3. (2018) 2 SUPREME COURT CASES 87 between Raj Kumar Bhatia vs Subhash Chander Bhatia
4. AIR 2006 SUPREME COURT 2832 between Baldev Singh and Ors. etc Vs Manohar Singh and Another etc.,
5. 2018 (5) KCCR SN 101 between Sharath vs Savitri Yamanappa Ramagouda and others
6. AIR 2007 SUPREME COURT 1663 between Usha Balashaheb Swami and Ors. Vs Kiran Appaso Swamin and ors.
7. 2019 (4) AKR 658 between Devananda Ramanna Vs Raghunandan Ramanna and another
8. HCR 2015 Kant. 638 between Shivamurthy Swamy Ji vs Kavaludar Govindappa and others

9. ILR 1999 KAR 2358 between Dr. Amanulla Baig  
Vs Mahaboob Jan
10. ILR 1995 KAR 1808 between Sangavva vs  
Jaherabi
11. 2019 (1) AKR 214 between Iranna S/o Desai  
Allolli vs Smt. Parawwa and another
12. 2016 (1) KCCR 181 between  
Venkatalakshmi and Others vs Smt  
Padma and Others.
13. 2018 (4) AKR 527 between Sharath vs  
Savitri Yamanappa Ramagouda
14. (2017) 8 SUPREME COURT CASE 567  
between State of Bihar and others Vs  
Modern Tent House and another
15. AIR 2020 (NOC) 495 (P.&H) AIR ONLINE  
2019 P & H 1222 Dr. Sudharshan  
Kumar Aggarwal vs Smt Seema and  
another
16. SUPREME COURT 1178 between Shikhar  
Chand Jain v. Digamber Jain Praband  
Karini Sabha.

**8.** Now the points that would arise for my consideration are;

**POINTS**

1. Whether the proposed amendment is necessary for the purpose of

determining the real questions in controversy between the parties?

2. What order ?

9. My findings to the above points are as under:

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

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

### **REASONS**

**10. Point No.1:** The suit of the plaintiffs is one for the relief of partition and separate possession. The counsel for defendant No.1/applicant vehemently argued that, the proposed amendment is very much essential to defend the case of the plaintiffs and also the proposed amendment has direct bearing on the subject matter in issue. The delay is not intentional, but bonafide. Hence prays to allow the application.

**11.** Per contra, counsel for plaintiffs vehemently argued that, the proposed amendment is sought only to drag on the proceedings at the fag end of the proceedings. There is no due diligence. Moreover, the proposed amendment is not an subsequent events. Moreover, the defendant

No.1/applicant and the plaintiffs jointly filed a memo dated 04.08.2011 in O.S.No. 1535/2007 which is marked as Ex.P.109 wherein both the parties restricted their defence to the said suit only. Such being the case, the defendant can not take benefit of his defence taken in O.S.No.1535/2007 in this case as it is restricted only to that suit by filing a memo. Hence, prayed to dismiss the same.

**12.** Perused the materials on record.

**13.** By way of amendment the defendant No.1 proposed to amend his written statement by incorporating the factum of filing the suit in O.S.No.1535/2007 and the outcome of the suit, so also the filing of appeal in R.A. No.733/2011. Further, the defendant No.1 prays to take the benefit of defence taken in the O.S.No.1535/2007 in the present suit also.

**14.** Perused the written statement filed by defendant No.1 in this case as well as in O.S.No.1535/2007 which is marked at Ex.P83 which is the judgment in O.S.No.1535/2007. The defendant No.1 has taken similar contentions in both the cases. The defendant No.1 wish to place the outcome of the suit and the appeal by way of

proposed amendment to his written statement. No doubt there is a delay in filing the application. However, it is to be noted that, the suit in O.S.No.1535/2007 and the Appeal in R.A. No.733/2011 were disposed off after the defendant No.1 filing a written statement in this case i.e., the written statement of defendant No.1 filed in this suit on 15.06.2010 and the suit in O.S.No.1535/2007 was disposed off on 31.10.2011 and appeal in R.A. No.733/2011 was disposed off on 03.09.2012. Therefore, apparently it is clear that the proposed amendment is an subsequent events. Therefore, in the rulings relied by the defendant No.1 the Hon'ble Apex court as well as the Hon'ble High Court of Karnataka held that, the amendment to the written statement has to be liberally allowed. In the present case, the proposed amendment are the subsequent events. No prejudice will be caused to the plaintiff by allowing the present application. However, since there is a delay in filing the application, the same can be compensated by way of imposing cost on the applicant. Hence, I answer Point No.1 in the **"Affirmative"**.

**15. Point No.2:** In view of my answer to point No.1 in the **"Affirmative"** I proceed to pass the following;

**ORDER**

I.A.No.17 filed by the applicant/defendant No.1 Under Order VI rule 17 r/w Sec.151 of C.P.C. is hereby allowed on cost of Rs.1,000/- payable to plaintiffs.

The defendant No.1 permitted to amend the written statement as prayed for and file amended written statement by 21.08.2025

(Dictated to the Stenographer, transcribed and typed by her, corrected by me and pronounced in the open Court on this the **14<sup>th</sup> day of August 2025**)

SD/-  
**(Prabhibha D.S)**  
**Judge,**  
**Court of Addl. S.C., & MACT**  
**Mysuru**