

KAMS300001752023



**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL JUDGE  
AND JMFC AT HUNSUR**

**Present:** Smt.Anitha, B.A. (Law) L.L.B.,  
Addl. Senior Civil Judge & JMFC.,  
Hunsur.

**Dated this the 18<sup>th</sup> day of June 2024.**

**OS No.27/2023**

- Plaintiffs:
1. Nazarullaha Khan,  
S/o Late Afiz Khan,  
Aged about 47 years,  
R/at Panchavalli village,  
Periyapatna Taluk.
  2. Nayazullaha Khan,  
S/o Late Afiz Khan,  
Aged about 45 years,  
R/at Bylukkupe village,  
Periyapatna Taluk.

-Vs-

- Defendants:
1. Khalil Khan, S/o Late Peer Khan,  
Aged about 70 years,
  2. Wazir Khan, S/o Late Peer Khan,  
Aged about 68 years,
  3. Habid Khan, S/o Late Peer Khan,  
Aged about 55 years,

4. Zamrudh Khan, S/o Late Amir Khan, Aged about 50 years,
5. Farook Khan, S/o Late Amir Khan, Aged about 48 years,
6. Faridh Khan, S/o Late Amir Khan, Aged about 46 years,
7. Wahab Khan, S/o Late Ibrahim Khan, Aged about 50 years,
8. Zameer Khan, S/o Late Ibrahim Khan, Aged about 48 years
9. Waheed Khan, S/o Late Ibrahim Khan, Aged about 46 years,
10. Zamrudh Khan S/o Late Amir Khan, Aged about 50 years
11. Razak Khan, S/o Late Ibrahim Khan, Aged about 42 years,
12. Wajid Khan, S/o Late Ibrahim Khan, Aged about 40 years,
13. Noor Khan, S/o Late Ahmed Khan, Aged about 60 years,
14. Nuhulla Khan, S/o Late Ahmed Khan, Aged about 58 years,
15. Farooq, S/o Late Babu, Aged about 25 years,
16. Firoz, S/o Late Babu, Aged about 22 years,
17. Athaulla Khan, S/o Late Ahmed Khan, Aged about 32 years,
18. Zakriya Khan, S/o Late Ahmed Khan, Aged about 34 years,

19. Aman Khan, S/o Late Ahmed Khan,  
Aged about 46 years,

All are residing at Kampalapura village,  
Periyapatna Taluk.

1.	Provision under which the application is filed	:	Under Section 151 of CPC
2.	Relief sought for	:	To file rejoinder statement
3.	The date on which the application is filed	:	04.10.2023
4.	Number of the application	:	IA No.I
5.	The date on which the objection is filed by opponents	:	06.11.2023
6.	The date on which the orders passed on the said application	:	18.06.2024

### **ORDERS PASSED ON IA NO.I**

The learned counsel for the plaintiffs filed IA.No.I under Section 151 of CPC to permit the plaintiffs to file the rejoinder statement to the written statement filed by contesting defendants No.1, 2, 4 to 17.

2. The application is supported with the affidavit of the 1<sup>st</sup> defendant wherein it is stated that, the suit is for the relief of partition and separate possession. The defendants have filed a detailed written statement with specific allegations about the suit is bad for non-joinder of necessary parties which is alleged at para No.7 of the written statement. To the said defence of the defendants, the plaintiffs are required to file rejoinder statement to contest the said allegations. If the

rejoinder is permitted the defendants will not be put to any hardship. On the other-hand if the application is not allowed the plaintiffs will be put to irreparable loss. It is further stated that, due to oversight the plaintiffs could not file the rejoinder before framing of issues. Hence, prayed to allow the applications.

3. On the other-hand the learned counsel for defendants No.1, 2, 4 to 17 filed objection contending that, the application is not maintainable under law or on facts. The present application to permit the plaintiffs to file rejoinder is not correct. Already the issues have been framed and at this stage the plaintiffs cannot be permitted to file the rejoinder. At para No.4 to 8 of the objection statement defendants No.1, 2, 4 to 17 have stated about their defence taken up in the written statement. They have further contended that, the rejoinder statement is filed only with an intention to mislead the court. The rejoinder is not necessary for this case. It is also contended that, the proposed rejoinder will lead to multiplicity of proceedings and change the nature as well as cause of action. Hence, prayed to dismiss the application with costs.

4. Thereafter, heard arguments addressed by learned counsel for the plaintiffs and defendants No.1, 2, 4 to 17 and perused the entire case papers. After hearing the arguments and on perusal of the case papers, the points that arise for consideration are as hereunder:

**POINTS**

1. Whether the plaintiffs have made out sufficient grounds to permit them to file rejoinder?
2. What order?
5. The findings of the above points are as hereunder:

Point No.1: In the Affirmative

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

**REASONS**

6. **Point No.1:** This is the suit filed by the plaintiffs against the defendants seeking the relief of declaration that they are entitled for 1/19<sup>th</sup> share in the suit schedule property by way of partition. Admittedly, defendants No.1, 2, 4 to 17 are contesting defendants in this suit and filed their written statement. In the written statement at para No.7, defendants No.1, 2, 4 to 17 have specifically taken up the defence about the suit bad for non-joinder of necessary parties. They have stated that, the plaintiffs have left out some of the family members who are necessary parties to the suit. On the ground of non-joinder of necessary parties, defendants No.1, 2, 4 to 17 sought for dismissal of the suit. Already on the basis of rival pleadings of the parties on 30.06.2023 this court framed the issues. Issue No.5 has been framed about the suit bad for non-joinder of necessary parties as alleged by defendants at para no.7 of their written statement.

7. In the rejoinder statement filed along with IA No.I the plaintiffs have clarified about the defence taken up by contesting defence. In the rejoinder the plaintiffs stated that, the contesting defendants have not furnished the age, occupation and address of the persons mentioned in the written statement. The rejoinder statement is permissible under law. Admittedly, the specific defence of defendants No.1, 2, 4 to 17 has been set out at para No.7 of the written statement. The rejoinder will not take away any admissions of the parties. On the other-hand it is the right accrued to the plaintiffs. Therefore, this court comes to the conclusion that the plaintiffs have made out sufficient grounds to permit them to file the rejoinder statement. The delay caused could be compensated by way of imposing costs. Hence, Point No.1 is answered in the affirmative.

8. **Point No.2:** In view of the reasons discussed above this court proceeds to pass the following:

**ORDER**

IA No.I filed under Section 151 of CPC  
by the plaintiffs is hereby allowed with  
costs of Rs.250/-.

(Dictated to the Stenographer, transcribed and computerized by her on the computer, transcript corrected and pronounced by me in the open court on this the 18<sup>th</sup> day of June, 2024)

**(Anitha)**

Addl. Senior Civil Judge and JMFC.,  
Hunsur.

