

KAMS400007242019



**IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC**  
**AT K.R.NAGAR**

**PRESENT:** **Sri. Aravindra.B.C., B.A., L.L.B.,**  
**Senior Civil Judge & JMFC**  
**K.R.Nagar.**

Dated this the 26<sup>th</sup> day of February, 2024

**O.S./28/2019**

**1. Smt. Gowramma,**  
W/o Late Veerathaiah,  
Aged about 70 years,  
R/at: Chandagalu village,  
Hebbalu Hobli,  
K.R.Nagar Taluk,  
Mysuru District.

**2. Smt. Mani,**  
D/o Late Veerathaiah,  
W/o Mahadev,  
Aged about 48 years,  
R/at: Vaddarahalli village,  
Kasaba Hobli,  
K.R.Nagar Taluk.

**3. Smt. Baby,**  
D/o Late Veerathaiah,  
W/o A.V.Prakash,  
Aged about 44 years,  
R/at: Ankanahalli village,  
Chunchanakatte Hobli,  
K.R.Nagar Taluk.

**4. Smt. Annapoorna,**  
D/o Late Veerathaiah,  
W/o Late Gyanaprakash,  
Aged about 42 years,  
R/at: 266/1, Lalithamahala Nagara,  
Alanahalli Layout,  
7<sup>th</sup> Main road, Mysuru City.

**5. Smt. C.V.Manjula,**  
D/o Late Veerathaiah,  
W/o Late Shanthappa,  
Aged about 40 years,  
R/at: No.14, Rajkumar Road,  
JSS Layout, 1<sup>st</sup> Block,  
Mysuru City.

**.....Plaintiffs**

(By Sri. G.L.D., Advocate)

**-Versus-**

**1. Smt. U.P. Geetha,**  
W/o Late C.V.Shivappa  
@ Subhash,  
Aged about 40 years.

**2. Sri. C.S.Jeevan Kumar,**  
S/o Late C.V.Shivappa  
@ Subhash,  
Aged about 20 years.

Both are R/at:  
Chandagalu village,  
Hebbalu Hobli,  
K.R.Nagar Taluk,  
Mysuru City.

**.....Defendants**

(By Sri. L.V.R, Adv.)

**Parties to I.A.No.X**

**Applicant** : Smt. U.P.Geetha  
**..... 1<sup>st</sup> defendant**

-V/s-

**Opponent** : Smt. Gowramma  
**..... Plaintiff**

Provision under which the application is filed	Under Order 6 Rule 17 R/w 151 of CPC.
Relief Sought For	Seeking permission to amend the written statement
The date on which the application is filed	07.11.2022
Number of the application	IA No.X
The date on which the objections are filed by the different opponents	27.02.2023
The date on which the orders were passed on the said application	20.02.2024

**ORDER ON IA.No.X**

The 1<sup>st</sup> defendant has filed I.A.No.X under Order 6 Rule 17 R/w 151 of Code of Civil Procedure and seeking permission to amend the written statement by inserting para No.9(a).

2. In the affidavit, which enclosed to I.A.No.X, wherein he has stated that the plaintiffs have filed a suit against the defendants the relief of partition and separate possession with respect to the schedule properties. The defendants have filed written statement but, due to oversight they could not incorporate the proposed pleadings with respect to earlier proceedings in OS No.161/2018. Therefore, the proposed amendment does not change the nature of the suit nor cause of action. Even, the said proposed amendment is allowed, no hardship would be caused to the plaintiffs, otherwise they will put great loss. Accordingly, prays for allow the application.

3. On the other hand, the plaintiff has filed objection to the application. In the objection it is stated that, the application filed by the defendant No.1 is not maintainable both in law and facts. Further it is stated that, he filed the present application with intention to the

drag on the proceedings and harass to the plaintiff. The present application is filed after commencement of the trial. Therefore, the present application is not maintainable. Therefore, prays for reject the application.

4. Even after giving sufficient opportunity to the both parties to submit arguments on application but, they have not submit the arguments on the application. Hence arguments on application taken as not submitted and perused the records.

5. The following points that would arise for my consideration is:

***1. Whether the defendant No.1 has made out a ground that, the proposed amendment to be necessary for the purpose of determining the real question in controversy between the parties?***

***2. What order?***

6. My findings on the above 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:-** It is noticed from the pleadings of the parties that, the plaintiffs have filed a suit against the defendants for the relief of partition and separate possession. On the other hand, the defendants filed written statement. On the basis of rival claimants of the parties, this court framed issues and when the case posted for further examination of PW-1, the present application was filed. Further, it is noticed from record is that the relationship between the parties not in dispute.

8. Now the question arise before this court is, whether the amendment is necessary for the determination of the real question in controversy between the parties. Before discussion of the above point, this court glance the provision under Order 6 Rule 17 of Code of Civil Procedure. Hence, it is relevant to mention under **Order 6 Rule 17 of Code of Civil Procedure;**

9. Rule 17 provides for amendment of pleading it reads under;

***“The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.***

***Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”***

10. The said provision makes it clear that, at any stage of the pleadings allow the either party to alter or amend his pleadings. If the proposed amendment be necessary for the purpose of determining the real question in controversy between the parties.

11. It is well settled that, all amendments ought to have been allowed which satisfy the two conditions 1) of not

working in justice to other side and 2) of being necessary for the purpose of determining the real questions in controversy between the parties.

12. In the instant case, the plaintiffs filed the suit for partition and separate possession with respect to the schedule properties. On the other hand, the defendants filed written statement and denied the case of the plaintiff. Now, the defendant No.1 added one more para in the written statement with respect to the OS No.161/2018. Admittedly, the plaintiff No.2 to 5 have filed above said suit against the defendants and plaintiff No.1 before Civil Judge and JMFC, K.R.Nagar for the relief of partition. Further, it is admitted that the plaintiff has filed an application under Order 23 Rule 1 of CPC for withdrawal of the said suit. On content of the said application was allowed and filed present suit before this court. In the instant case, the defendant seeking amend the written statement incorporate the said proceedings in the written statement by way of amendment.

13. Further, it is noticed that, the defendant No.1 cannot withdrawn any admissions in the pleadings. It is settled law that the grant of application for amendment shall be subject to certain conditions namely, 1) when the nature of it is changed by permitting amendment 2) when the amendment would result in introducing new cause of action and intends to prejudice the other party and when allowing amendment applications defeats the law of limitation. The proposed amendment does not change the nature of the suit or cause of action and there is no defeats of the limitation in the amendment application.

14. If proposed amendment is allowed, the plaintiffs have got right to make file rejoinder statement and to adduce evidence to disprove the contention of the defendants, therefore to avoid the multiplicity of proceedings the proposed amendment is allowed. Hence, this court answered **Point No.1 in the Affirmative.**

15. **Point No.2** : In view of the discussions and conclusion arrived at Point No.1, this court pass the following;

**ORDER**

IA. No.X filed by defendant No.1 under Order 6 Rule 17 R/w 151 of C.P.C. is hereby ***allowed***.

The defendant No.1 is permitted to amend the written statement as prayed for and furnish the amendment written statement within 14 days from the date of this order.

For amendment of the written statement.

*[Dictated to the Stenographer directly on computer, corrected and then pronounced by me in the Open Court on this the **26<sup>th</sup> day of February, 2024**]*

**(ARAVINDRA B.C)**  
**SENIOR CIVIL JUDGE & JMFC.,**  
**K.R.NAGAR.**