

KAMS500006202018



**IN THE COURT OF SENIOR CIVIL JUDGE & JMFC
NANJANGUD**

Present : **Sri. Kamalaksha D., B.A., LL.B.,**
Senior Civil Judge & J.M.F.C.,
Nanjangud.

Dated this the 13th day of September 2024

O.S./101/2018

Plaintiffs: K.M.Mahadevaswamy and another
-V/s-

Defendants: Chikkamma @ Minnamma and
others

I.A. IV

Applicant : S.Shivaswamy
.. defendant No.16
-V/s-

Opponents : K.M.Mahadevaswamy and another
...plaintiffs

**ORDERS ON I.A.IV UNDER ORDER
VI RULE 17 R/W SECTION 151 OF CPC**

The defendant No.16 filed application on the above said provision seeking permission of the court to amend the written statement, to add paragraphs after paragraph No.28.

2. The 16th defendant proposed to insert long list of averments in the written statement stating that those proposed averments in the written statement are very much required to decide the question in dispute between the parties. However, he could not introduce the same due to oversight. In order to better appreciation of the facts, the proposed amendment in the written statement is very much required. Hence, the applicant prays to allow the application.

3. Per contra, the counsel for the plaintiffs filed objections stating that the application is not at all maintainable and the 16th defendant/applicant has not mentioned exact reason for amendment of written

statement because the said application is filed post evidence stage, because already the plaintiff has filed his chief-examination affidavit and got marked many documents. It is further explained that, permission for amendment of the written statement will allow the 16th defendant to introduce some more defence, because already he has taken different types of defence in the written statement. Therefore, present amendment will conflict each other. Therefore, prayed to reject the application.

4. Heard. Perused pleadings and materials placed on record. The points that arise for consideration are:

1. Whether the applicant/ defendant No.16 has made out sufficient grounds to allow the application ?
2. What order ?

5. The above points are answered as follows :-

- | | | |
|------------|---|--|
| Point No.1 | : | In the affirmative |
| Point No.2 | : | As per final order for the following:- |

REASONS

6. **Point No.1:-** The suit is filed for partition and separate possession. The 16th defendant already filed written statement on 03.10.2018, therefore the plaintiff strongly denied to allow the application, because it is filed in belated stage. The amendment application was filed on 28.06.2023. The defendant No.16 is going to introduce many new facts to establish the nature of the property as absolute property as per Section 14(1) of Hindu Succession Act etc. The purpose of trial is only to adjudicate the matter effectively, otherwise mere disposal of the matter will not give any effective adjudication either to the plaintiffs or defendants. Suppose amendment of written statement is allowed it would not cause any hardship to the plaintiffs, because they will challenge the testimony of the defendants' side evidence in trial.

7. The suit is filed for partition and separate possession. The definite stand of the 16th defendant that, the schedule property comes under Section 14(1) of Hindu

Succession Act. Hence, the counsel for the plaintiffs further argued that, this application came to be filed after commencement of the evidence means the post evidence stage. However, there is no strict rule under Order VI Rule 17 of C.P.C. to reject the application filed after commencement of the evidence. As discussed above, if the application is not allowed, it will prevent the 16th defendant to prove the nature of the property, because he desired to introduce the defence that the property comes under Section 14(1) of Hindu Succession Act. Suppose the application is allowed, it will not cause any hardship to the plaintiffs. Hence, **point No.1 is answered in the affirmative.**

8. **Point No.2:-** In view of the findings on the above point, this Court proceeds to pass the following:

ORDER

I.A.IV filed by the applicant/ defendant No.16 under Order VI Rule 17 r/w Section 151 of C.P.C. is allowed with no order as to cost.

The defendant No.16 is permitted to file amended written statement, call on 19.10.2024.

(Dictated to the stenographer, transcribed by her on computer, revised, corrected and then pronounced by me in open Court on this the 13th day of September 2024).

(Kamalaksha D.)
Senior Civil Judge & J.M.F.C.,
Nanjangud.