

KAMS710010632020



IN THE COURT OF I ADDITIONAL CIVIL JUDGE AND
JMFC AT T.NARASIPURA

Dated this the 15th day of April 2026

Present: **Smt. Niveditha N., B.A.L., LL.B, LL.M.,**
I Additional Civil Judge & JMFC., T.Narasipura.

O.S./208/2020

Applicant: Smt.Padma
..... defendant No.2

V/s

Opponents: Smt.Sarojamma and Others
..... plaintiffs

i.	Provision under which the application is filed	Order 6 Rule 17 of CPC
ii.	Relief sought for	Amendment of written statement
iii.	The date on which the application is filed	24/02/2025

iv.	Number of the application	No.4
V.	The date on which the objections are filed by different opponents	23/10/2025
vi.	The date on which the orders were passed on the said application	15/04/2026

Order on IA No.4 filed under order VI Rule 17 of CPC

1. The defendant has filed this application seeking to permit her to amend the written statement as mentioned hereunder:

Amendment sought for:

After para No.8, Para No.8(a) may kindly be inserted as follows:

(a) “The 1st defendant passed away, during the pendency of the case during her life time when she was hale and healthy executed registered will on 27/-02-2018 infavour of R.Padma who is defendant No.2 bequeathing the property bearing Khatha No.2568/2151 situated at Ward No.12, measuring east to west 10.75 feet, north to south 41 feet which is morefully described in Item No.2 of the plaint

schedule property. The deceased Devamma when she was keeping good health executed registered will after her death the defendant No.2 became the absolute owner in possession, enjoyment of the property. The deceased having subsisting right to execute registered will not the 2nd defendant is in possession enjoyment of said property as absolute owner”.

2. In the accompanying affidavit, the defendant No.2 has stated that the defendant No.1 is her mother, she was under her care and custody. During her life time i.e. on 27/02/2018 she has executed a registered Will in her favour in respect of item No.2 of suit property. Hence, insertion of said fact in the plaint is necessary. The proposed amendment will not change the nature of suit or cause of action. Hence, prays to allow the application.

3. Per contra, the plaintiff No.1 has filed objections to the above application and contended that the defendant No.2 has filed the present application to grab the property through a created Will purportedly executed by the defendant No.1 taking advantage of her death. Moreover, item No.2 property is the ancestral property and as such the defendant No.1 has no right to execute any Will. The suit properties flown from her father cannot be bequeathed by her mother to any

body and all the surviving legal heirs of Rangaiah S/o Meli Subbaiah including the plaintiffs do have legitimate right over the suit properties and none can interfere with their individual right by creating fake Will in the name of a deceased defendant to cheat the plaintiffs. The defendant No.2 has filed the present application only to drag on the proceedings. Hence, prays to dismiss the application with costs.

4. Heard the argument of counsel for both parties.

5. The following points are arise for my consideration:

1) Whether the proposed amendment is necessary for determining the real question in controversy between the parties?

2. What Order?

6. Perused the documents available on record.

7. My answer to above points are as under:

Point No.1 : In the Affirmative

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

REASONS

8. Point No.1: The plaintiffs have filed the suit seeking for the relief of partition in respect of suit schedule properties. The defendants have filed the written statement by denying the claim of the plaintiffs. When the matter is posted for evidence of defendants, the defendant No.2 has filed the present application seeking for the amendment of the written statement. The counsel for plaintiffs filed objections.

9. In the affidavit the defendant No.2 has stated that, the defendant No.1 during her life time i.e. on 27/02/2018 she has executed the Will in favour of defendant No.2 in respect of suit item No.2 and her mother was in care and custody of defendant No.2. Hence, it is necessary to mention the said Will in the written statement. The counsel for the plaintiff has filed the objection by resisting the above application.

Order 6 Rule 17 of CPC reads as follows:

“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. In view of the above provision, the amendment of the pleadings after commencement of evidence of the parties, cannot be permitted without due delinquency. But in the case on hand, during the pendency of the case defendant No.1 died. As per the contention of the defendant No.2 is that her mother who is defendant No.1 herein has executed the Will in her favour in respect of suit item No.2. Therefore, Will is come into effect after the death of executor of the Will. Thus, it is subsequent even after filing of the present suit. Whether Will is created or not, has to be proved by the party who is relying upon Will.

11. Further, whether suit item No.2 is ancestral property or self acquired property has to be decided on merits. At this stage the objections of plaintiffs is that defendant NO.1 has

no right to execute the will cannot be acceptable. Hence, in order to avoid multiplicity of proceedings, it is just and necessary to allow the application. If the application is allowed the burden is on the defendant No.2 to prove the amendment sought in the application. If the application is allowed no prejudice will cause to the plaintiffs. **Hence, this court proceeds to answer Point No.1 in the Affirmative.**

12. Point No.2: In view of the answer and reasons stated in point No.1, this Court proceed to pass the following;

ORDER

IA.No.4 filed by defendant No.2 under Order 6 Rule 17 of C.P.C is hereby allowed and thereby permitted the defendant No.2 to amend the written statement and to file amended written statement.

[Dictated to the Stenographer, transcribed by her and corrected by me and pronounced in the Open Court on 15th day of April 2026]

**I Addl.Civil Judge & JMFC.,
T.Narasipura.**

(Order pronounced in open court vide separate order)

ORDER

IA.No.4 filed by defendant No.2 under Order 6 Rule 17 of C.P.C is hereby allowed and thereby permitted the defendant No.2 to amend the written statement and to file amended written statement.

**I Addl.Civil Judge & JMFC.,
T.Narasipura.**