

IN THE COURT OF THE SENIOR CIVIL JUDGE & J.M.F.C., DEVADURGA

Present:

Sri.Suresh Annappa Savadi., B.A., (SPL).,

Senior Civil Judge & JMFC, Devadurga.

O.S.No.51/2022

DATED : THIS THE 4th DAY OF JUNE 2025

Applicant/ Defendant : Eashappa @ Eshwarappa
S/o. Ramangouda.

(By Sri.A.M.P., Advocate)

--V/s--

Opponents / Plaintiff : Gouramma W/o. Shekrappagouda.

(D.1 to 4 & 8 to 13 exparte)
(D.5 to 7 by Sri.B.S.D. advocate)

Provision under which the application is filed	U/o.6 rule 17 R/w.Sec. 151 of CPC.
Relief sought for	To amend the written statement adding the further pleadings in para no.6.
The date on which the application is filed	12.03.2025
Number of the application	IA.No.IV
The date on which the objections are filed by different opponent	--
The date on which the orders were passed on the said application	04.06.2025

ORDER ON IA NO.IV

The defendant No.5 to 7 have filed this application U/o.6 Rule 17 of CPC to amend the written statement adding the further pleadings in para no.6.

2. In the affidavit contained that the plaintiff has filed suit against the defendants for partition and separate possession. Further contended that plaintiff has filed suit in O.S.No.221/2015 before the CJM Raichur which was renumbered as O.S.No.164/2016 before the Senior Civil Judge, Devadurga. The same was dismissed for non-prosecution against that, Civil Misc.No.6/2018 was filed. At the time of filing of written statement the case summons and notice not served on the defendant. The defendant was not aware of the above case. The plaintiff came to know that the defendant got information at the time of plaintiff's evidence. Later, the defendant collected the documents on 04.03.2024. At the time of cross-examination of PW.1, she denied the above facts. Therefore, it is necessary to include the pleadings in the written statement to prove the case of the defendant. The error is not intentional but accidental. Hence, if the application is allowed, no loss will cause to the other side. On the other hand, defendant will put to untold hardship. Hence, prays to allow the application.

3. On the other hand, in spite of giving sufficient opportunity, the plaintiff did not filed the objection. Hence, objections by plaintiff taken as not filed.

4. Heard.

5. Considering the contentions of the parties, following points arise for my consideration.

1. Whether the plaintiff has made out sufficient ground to allow the application ?
2. What order?

6. My findings for the above points are as under.

Point No.1: In the negative,

Point No.2: As per final order.

For the following,

REASONS

7. **POINT NO.1:-** The plaintiff filed this suit for partition and separate possession against the defendant in respect of suit schedule properties. For that the defendant of service of summons appeared and filed their written statement and in the written statement taken contention about the prior partition that during the lifetime of Raman Gowda S/o. Sanna Basanna partition took place among the sons and daughters long back and allotted the shares. Now, this being a fact, now the case is posted for defendant evidence as finally. At this stage, the present application was filed by the defendant to amend the written statement inserting the para, in respect of filing of suit in O.S.No.221/2015, which was dismissed for non-prosecution. Subsequently, civil miscellaneous for restoration was filed. Same was also not proceeded and same is also dismissed. Meantime, the Raman Gowda sold the land bearing Sy.No.94/2, measuring 05 acres 23 guntas. At that time, the plaintiff has received the amount towards his share and he has signed the sale deed as consent witness. The said pleadings is to be inserted.

The sale deed was taken place on 27.06.2019 and the present suit was filed in the year 2022. The said fact is well within the knowledge of the defendant as the plaintiff's father has received the amount towards his share and now the case is posted for defendant evidence finally. In the affidavit, why he has not shown the said fact has not at all been disclosed. In the affidavit, he contended that the above said case summons and notice was not served on me. To show the same, did not placed any material. The civil miscellaneous was also filed in the year 2018 itself which shows that prior to that only the suit was dismissed for non-prosecution and there is no due diligence shown by the defendant and moreover already the case is posted for defendant evidence as finally. Hence, under such circumstance, this court is of the opinion that the defendant has not made out sufficient grounds to allow the application. Hence, in the interest of justice, this court answered the point No.1 in the negative.

8. **POINT NO.2:** In view of reasons stated in the point No.1 this court proceed to pass the following,

ORDER

The IA No. 4 filed by the defendant No. 5 to 7 under Order 6 , Rule 17 of CPC is hereby rejected.

(Dictated to the Stenographer directly on the computer, typed by him corrected by me and then pronounced in the open court on this the 4th day of June 2025).

(Suresh Annappa Savadi)
Senior Civil Judge & JMFC.,
Devadurga.