

ORDER ON I.A. NO. 07 FILED UNDER ORDER 6 RULE 17
READ WITH SECTION 151 OF C.P.C.

The plaintiff filed the present application seeking amendment in plaint as shown in the application.

2. In the affidavit annexed with the IA the plaintiff stated on oath that the present suit is filed by the plaintiff for the relief of partition and separate position. Now the case is pending for the evidence of the plaintiff. It is further contended that on earlier point of time, the suit was dismissed and the same was challenged before Honble II Additional District Court Raichur in R.A.No 35/ 2019, and the same was allowed by remanding back the matter to this court for fresh disposal by giving an opportunity to the both parties to the suit to add defendant No.7 and also to plead additional pleadings by way of amendment. In this changed circumstances, it has become necessary to amend the plaint as sought in the proposed application. On perusal of the plaint, due to oversight inadvertently pleaded that the suit properties are ancestral properties, but in fact, the suit properties are the Sthridhana properties of Sugama, and she was the absolute owner and in possession of the same. It is very material to permit the plaintiff to amend the plaint as prayed in the application for deciding or adjudicating the matter in accordance with law. Hence, the present application. To the said application, the

defendant No 6 has filed the objections by contending that the pleadings mentioned in the plaint is contrary to the oral evidence of the plaintiff and also to the documents produced by the plaintiff. Amendment is against to the pleadings of the plaint. The plaintiff is already examined on 20.01. 2018 after remanding of the case for fresh disposal. The plaintiff has filed the present application to cure the defects. The proposed amendment will change the nature of the suit. There was only direction to add the parties in the suit, hence, prayed to reject the application

3. Heard both sides.

4. Perused the documents.

5. The point that arise for my consideration is:

1) Whether the plaintiff proves that the proposed amendment is necessary for the proper adjudication of the lis between the parties?

2) Whether the plaintiff made out sufficient grounds to allow I.A. No. 07 by permitting the plaintiff to amend the plaint as prayed in the IA?

3) What order?

6. On the basis of materials available on record and the oral and documentary evidence, I am answering the above points in following manner:

Point No.1 & 2: In the affirmative
Point No.3 : As per the final order
for the following.

REASONS

7. **Point No. 1 and 2** :- As these points are inter connected with each other they are taken together for common discussion to avoid the repetition of facts. The suit is filed for the relief of partition and separate possession of the suit schedule property. Now, through the amendment application the plaintiff want to plead specifically about the nature of suit properties. Whether the suit properties are ancestral properties or individual properties is a matter of trial. It is general rule that any amount of evidence in the absence of pleadings cannot be considered and vice versa. Thereby, No doubt that the plaintiff has to prove his case. The amendment can be permitted at any stage of the proceedings if the party shows that in spite of due diligence, he could not raise the matter in the earlier stage. Further, order 6 rule 17 of C.P.C. clarifies that the amendment may be entertain for the purpose of determining the real questions in controversy between the parties. By considering the same, if the plaintiff is permitted to amend the plaint, it will not cause any injury to the defendants as the defendants have every right to cross-examine and also lead the defence evidence to disprove the case of the plaintiff. On the other hand the plaintiffs are under

the burden to prove their contentions. The credibility or the proof of the facts sought in the amendment cannot be looked into at this stage. The other contentions urged by the defendants can be looked into at the time of trial. The proposed amendment is not going to change the nature of suit. Hence, by considering these facts, if the proposed amendment is allowed by reserving the right of the defendants and putting the burden on the plaintiff to prove her case, no prejudice will going to cause to the defendants. Accordingly, the point No.1 and 2 answered in the affirmative.

8. Point No.3: For the reasons discussed in point No.1 and 2 proceed to pass the following;

ORDER

I.A. No. 07 filed by the plaintiff under order 6 rule 17 R/w 151 of C.P.C. is hereby allowed on cost of Rs 2000/-.

In the result, the plaintiff is permitted to amend the plaint as prayed in I.A. No.07.

For amendment and amendment plaint
18.07.2026.

Senior Civil Judge & JMFC.,
Manvi.