

KARN410002262021



**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL
JUDGE AND J.M.F.C., AT MAGADI.**

-:: PRESENT ::-
**SRI. SHIVAKUMAR R., B.A.L., LL.B.,
ADDITIONAL SENIOR CIVIL
JUDGE & ADDL. JMFC., MAGADI.**

**Dated: 15th Day of December 2025
O.S.No.152/2021**

Plaintiffs : Smt. Puttarevamma & Ors.,
(By Sri. B.V.K. Advocate)

--V/s--

Defendants : Smt. Hanumanarasamma & Ors.,
(By Sri. R.K. Advocate)

PARTIES TO I.A.NO.4

Applicant : Sri. Dhananjaya (D6)

Vs.

Opponents : Smt. Puttarevamma & Ors.,
ORDER ON I.A.NO.4

When the matter is set down for cross-examination of
PW.1, the defendant No.6 has filed the instant IA.



2. The defendant No.6 has filed the instant I.A., under Order VI Rule 17 r/w. Section 151 of C.P.C., and pleaded to permit him to amend the written statement as sought in the IA.

3. The I.A., is supported with the affidavit of the defendant No.6. It is stated in the affidavit that, the plaintiff filed the above suit for the relief of Partition. At the time of filing the above written statement, due to typographical error and oversight a mistake is crept bonafide reason and a plea has left out at the time of filing written statement due to hurry. The mistake and left out plea was not noticed these days, the same was noticed very recently. Hence this IA.

4. The copy of I.A., was served to the other side. The plaintiff has filed the detailed objections and resisted the I.A., filed by the defendant No.6 and interalia contended that, at the outset the application filed by the 6th defendant is not maintainable, the suit of the plaintiffs for the relief of



partition and separate possession for which defendants have filed their detailed written statement long ago. In case the intention of defendants was to get amend the their written statement definitely they could have done before framing issues, but they have not utilized the same, moreover the law always strictly speaks in such situation is, anyone of the litigation really wish to or wanted to get alter his pleading which inadvertently or by oversight made mistake he must have make such alteration or addition before framing issues, in the worst case before commencement of trail but in this case both stages is crossed, accordingly application brought by defendant No.6 is devoid under statutory restriction therefore same is liable to dismiss.

5. It is further contended that, on mere cursory reading of the averments made in the para 3 of the affidavit's accompanying application, it couched that same is perfunctorily filed the application with clear intention to prolong the proceedings, in case anyone really wanted to get



rectify his mistake which occurred beyond avoidable circumstances, certainly he should have narrate seriously why he has been prevented in making such changes within in permitted time with due diligence, but no such reasons is set out, on this simple ground alone application filed by defendants is liable to dismiss. In so far relief of insertion of additional para is concerned it is purely question of law, wherein defendants have been forbidden to reduce the same in pleadings, as same required to consider by this Court, for simple exemplification if the said Phada is restored by concerned authority during the pendency of suit, then defendants need to get expunge the same. For all these grounds the plaintiffs pray for to reject the IA filed by the defendant No.6.

6. Heard arguments on both sides.



7. On perusal of the rival contentions and other materials placed on record, the following points that would arise for my consideration are :

1) Whether the I.A.No.4 filed by the defendant No.6 is deserves to be allowed and whether the amendment sought by the defendant No.6 is very much necessary to determine the real controversy between the parties?

2) What order?

8. My findings on the above points are as follows :

Point No.1 : In the Affirmative,

Point No.2 : As per the Order,

for the following:

REASONS

9. **POINT NO.1:** On perusal of the materials available on record, admittedly the plaintiff has filed present suit against the defendants for the relief of partition and separate possession of her legitimate share in respect of suit schedule properties. When the matter is set down for cross –



examination of PW1, the defendant No.6 has filed this IA to amend the written statement as sought in the I.A.

10. It is the urge of the defendant No.6 that, at the time of filing of the written statement due to typographical error and oversight, a mistake is crept in the written statement, the said mistake is due to the above said bonafide reason and a plea has left out at the time of filing written statement due to hurry. The mistake and left out plea was not noticed all these days, the same was noticed very recently.

11. Per contra, it is the urge of the plaintiff that, in the instant suit, the evidence has been commenced. Hence, the application filed by the defendant No.6 at this belated stage is not maintainable and moreover he has not assigned any valid reasons in the supportive affidavit of the annexed I.A., to allow the application.

12. At this juncture, I would like to refer Order VI Rule 17 of CPC which 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."

13. On perusal of the aforesaid provision, it is clear that, the parties to the suit are permitted to bring forward amendment to their pleadings at any stage of the proceedings for the purpose of determining the real questions in controversy between them. If such application is made after commencement of the trial, in that event, the court has to arrive at conclusion that in spite of due diligence, the parties



could not have raised the matter before the commencement of the trial. In the instant suit, the matter is set down for cross-examination of PW-1.

14. At this juncture, I would like to refer the decision rendered by the Hon'ble Apex Court of India in the case of **Pandit Malhari Mahale Vs. Monika Pnadit Mahale and others**, reported in **(2020) 11 SC 549**, wherein the Hon'ble Apex Court held that:

"It is the primal duty of the court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed."

15. In another decision rendered by the Hon'ble Apex Court of India in the case of **Rajesh Kumar Aggarwal and others Vs. K.K.Modi and others**, the same is reported in **(2006) 4 SCC 385**, wherein the Hon'ble Apex Court of **India** held that:



"The court should allow the amendment would be necessary to determine the real question of the controversy between the parties, but the same indisputably would be subject to the condition that no prejudice is caused to the other side."

16. The another decision of Hon'ble Apex Court of India reported in **2019 SCC On-line SC 194** between **M. Revanna Vs. Anjinamma**, pleased to explained under what circumstances an application for amendment of pleadings filed after commencement of trial can be allowed. The Hon'ble Apex court of India pleased to held that,

"Though normally amendments are allowed in the pleadings to avoid the multiplicity of litigations, the court need to take consideration whether the application for the amendment is bonafide or malafide and whether the amendment caused such prejudice to the other side which cannot be compensated in terms of money".



17. The ratio laid down in the aforesaid decisions are aptly applicable to the present case on hand. Admittedly it is a suit for partition and separate possession in respect of suit schedule properties. The defendant No.6 has not sought for to amend the entire written statement, but he has sought for amendment of written statement as mentioned in the I.A. In a suit for partition in order to prove the defense of the defendant No.6, is lies upon him. On perusal of the rival contentions of the both parties and other materials placed on record, this court has to arrive at conclusion that in spite of due diligence, the parties could not have raised the matter before the commencement of the trial. It is very pertinent to note that, on perusal of the materials available on record, the proposed amendment sought by the defendant No.6 in the I.A., is very much necessary to determine the real question in controversy between the parties. If the proposed amendment is allowed, it will not change the nature of the suit and also cause of action. If the application is allowed, there is no harm



caused to the other side. Considering all these reasons, I answer Point No.1 in the '**Affirmative**'.

18. **POINT NO.2** : In view of my findings on Point No.1, I proceed to pass the following :

ORDER

I.A.No.4 filed by the defendant No.6 under Order VI Rule 17 r/w Section 151 of CPC is hereby allowed on payment of cost of Rs.500/-.

The defendant No.6 is hereby permitted to carry out the necessary amendment in the written statement and to file amended written statement copy.

For compliance of court order by
06.01.2025.

(Dictated to the Typist directly on the computer, typed by her, corrected by me and then pronounced in the open Court, on this the day of **15th day of December, 2025.**)

(Shivakumar R.,)
Additional Senior Civil Judge & J.M.F.C.
Magadi.