

KASM300004392022



**IN THE COURT OF PRL. SENIOR CIVIL JUDGE & JMFC.,  
BHADRAVATHI.**

**Dated on this the 19<sup>th</sup> day of July, 2025**

**PRESENT: Sri Raghavendra.D., B.Com, LL.B.,  
Prl. Sr. Civil Judge & JMFC.,  
Bhadravathi.**

**O.S.No.31/2022**

**PLAINTIFF:** Smt.Sunandamma

**-Vs-**

**DEFENDANTS:** Smt. Premamma and others

**PARTIES TO I.A.No.VIII**

**Applicant /  
Defendant No.2:** Sri.Halesh  
(By Sri.T.S.T., Advocate)

**Vs.**

**Opponent /  
Plaintiff :** Smt. Sunandamma  
(By Sri.S.K., Advocate)

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**ORDERS ON IA No.VIII**

The defendant No.2 filed an IA under Order VI Rule 17 R/w Section 151 of CPC praying to permit him to amend the written statement.

The proposed amendment as follows:

To add word 'not' in page 7, 5<sup>th</sup> line after the word Even though the schedule property was

2. The application is accompanied by an affidavit sworn by the defendant No.2 by name Sri.Halesh. In his affidavit he has stated that the plaintiff filed suit for relief of seeking direction to delivery of possession of eastern portion of house property. They have filed detailed written statement by denying the plaintiff averments. This court recorded the evidence of plaintiff and her witnesses as PW1 and PW2 at this stage while going through the written statement, they found that some due to typographical error as occurred in page No.7 in line No.5. As such they intended to rectify by correct the error by way of amendment. The said amendment is very much necessary and required one to defend his case. Hence, prays to allow the application.

3. Per contra, learned counsel for plaintiff filed objections by stating that the application is not maintainable either in law or on facts. Further it is stated that as per settled principles of law, generally the applications prior to framing of issues can be considered and subsequently that too after commencement of trial it should not be allowed. In the present case already case posted for evidence from the side of defendant. At this stage the present application is not maintainable and only with an intention to drag on the proceedings the application was filed by the defendant. The defendant is trying to patch up lacuna in the pleadings and the same cannot be permitted to cure by considering the application. The defendant after taking all benefits from the family trying to deny the partition affecting the interest of the plaintiff, which is their self acquired property and the same is totally impermissible under law. The defendant has not at all stated any genuine and considerable facts before this court in order to consider the application in an assertive manner, but only with an intention to protract the case and to harass the plaintiff he filed this application. Hence, prays to dismiss the application.

4. Heard arguments on both side and perused the materials available on record.

5. Now the points that would arise for my consideration are:

**1) Whether the defendant No.2 has made out proposed amendment is necessary for the purpose of determining the real question in controversy between the parties?**

**2) What order?**

6. My findings to 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 suit for delivery of possession of eastern portion of house property out of two portion house property existing in schedule property, which is under their illegal and unlawful possession. The defendant in his affidavit he has stated that at the time of recording of evidence of PW1 and PW2 and while going through the written statement he found that some typographical error as occurred in page No.7 in para No.5. According to defendant, he wants to add word 'not'.

8. The plaintiff has contended that the case has been already posted for defendants evidence at this stage he cannot file this application and the amendment is not permissible. Now, the

defendant is trying to patch up lacuna in the pleadings and the same cannot be permitted. If the amendment is allowed it will cause serious injustice. On perusal of record, the defendant filed instant application when case posted for cross examination of PW1 and PW2. According to plaintiff, the said property allotted to plaintiff under registered partition deed and based on that document she claiming possession. In the written statement at page No.7 defendant stated as follows:

*"Even during the time of partition, the first defendant and her tenant were not evicted in due course of law. Even though the schedule property was allotted to the plaintiff's husband., the husband of the plaintiff has not evicted the first defendant and her family members including the tenants in due course of law even subsequent to 15/03/2004, the first defendant and her family members continued in possession of the property and they have also put the tenants in possession of eastern portion of the twin house."*

9. The defendant, now he wants to add word 'not' before word allotted. If the defendant added word 'not' the entire sentence will be changed. On perusal of proposed amendment now defendant trying to withdraw the earlier admission made in his written statement.

10. Learned counsel for defendants relied upon a decision reported in **2025 (1) KCCR 432 in between Udayakumar Shetty and others Vs Seetharama Shetty and others**, wherein Hon'ble High Court of Karnataka held as follows:

*The Court stated that the version of the Court below that already PW1 has been examined is not a ground for denying just prayer for the leave to amend the pleadings more particularly in partition suit, as has been held by the Apex Court in a catena of decisions. This aspect of the matter has not been properly discussed by the learned judge of the Court below and that itself constitutes an error apparent on the face of the record. What prejudice would have been caused to the parties if leave was accorded is also not discussed in the right perspective. Merely chanting that the amendment if allowed would cause prejudice to other side is of no avail. The Courts have to make all endeavors to settle the dispute completely in a wholesome way so that no party would go home with a heart-burn.*

11. Case on hand, the defendant trying to withdraw earlier admission made in his written statement. With due respect to the Hon'ble High Court of Karnataka the facts and circumstances of the above reported judgment and case on hand

are not one and the same. Hence, judgment relied upon by the defendant is not helpful to his case. On perusal of proposed amendment, if it allowed, it will withdraw admission made in the written statement. On perusal of entire case records the defendant has not made out ground to permit him to amend the written statement. Accordingly, I answered **point No.1 in the negative.**

12. **Point No.2:** - In view of the reasons assigned above, I proceed to pass the following

**ORDER**

The IA No.VIII filed by defendant No.2  
under Order VI Rule 17 R/w Section 151 of CPC is  
hereby dismissed.

No order on cost.

(Dictated to the Stenographer Grade-III, transcribed by her,  
corrected by me and then pronounced in the open court on this the 19<sup>th</sup>  
day of July, 2025)

**(Raghavendra.D)**  
**Prl. Sr. Civil Judge & JMFC.,**  
**Bhadravathi.**