

ORDERS ON I.A.

This application is filed by the plaintiff U/O 6 Rule 17 of CPC with a prayer to amend the plaint by including suit item No.11 & 12 in the plaint schedule by way of proposed amendment in the interest of justice and equity.

2. It is stated in the annexed affidavit that, the properties sought to be included are acquired by defendant No.2 out of joint family nucleus. The proposed amendment introduce no new case. It is necessary to adjudicate the matters in controversy completely and effectively. Accordingly, prayed to allow the application.

3. The defendants filed objections stating that, the defendant No.2 and his wife acquired the properties by raising loan in a Co-operative Bank and out of their self earnings. The properties sought to be included are not the ancestral properties. No grounds made out to allow the application. Accordingly, prayed to reject the application.

4. Perused the application and the objections. Heard the argument .

5. The points that arise for my consideration are;

1. Whether the proposed amendment is necessary for complete and effective adjudication of matters in controversy?
2. What Order?

6. My answer to the above points are as follows;

Point No.1 : In the Affirmative

Point No.2 : As per Final Order
for the following;

REASONS

7. **POINT NO.1:** Plaintiff filed the suit for the relief of partition and separate possession. Now plaintiffs are seeking to add some more properties. At this juncture it is relevant to the ruling reported in 2019(2) KCCR 1531 between Krishnappa and others Vs. Byrappa and others. In this ruling held as follows:-

“Civil Procedure Code, 1908 – Order 6, Rule 17 – Amendment of plaint – Suit for partition – Application filed after commencement of trial seeking inclusion of certain properties reflected in written statement – In suit for partition properties can be included even at stage of final decree proceedings – Amendment allowed”.

8. The proposed amendment will not change nature of the suit or the cause of action. It will aid the court to adjudicate the matter in issue completely and effectively. If the application is allowed, no prejudice will be caused to the other side. The defendants are at liberty to file additional written statement and to give rebuttal evidence. The delay alone is not sufficient to reject the application. This court being trial court bound to

provide all the opportunity to the parties to establish their case. Hence, I incline to allow the application imposing costs. Accordingly, I answer the above point in the **Affirmative**.

9. **POINT NO.2:** For the above discussed reasons, I proceed to pass the following;

ORDER

I.A. U/o 6 Rule 17 of CPC filed by the plaintiffs is allowed on payment of costs of Rs.500/-.

Plaintiff is permitted to amend the plaint as per proposed amendment.

To furnish amended plaint and to file additional written statement by the defendants.

Call on 19.11.2019.

**Senior Civil Judge & JMFC.,
Sira.**