

KAUK020001562025



**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL
JUDGE AND JMFC, KARWAR, UTTARA KANNADA**

Dated this the 9th Day of October, 2025

PRESENT : **SRI. GANESHA PADIYAR U.,**
B.Com. LL.B.
Addl. Senior Civil Judge & JMFC.,
Karwar.

O.S.No.4/2025

Plaintiff : Smt. Seema W/o Late Prabhakar Naik,
Age 46 years, Occ: Household,
R/o House No.1031,
Vaman Ashram Road,
Karwar.

(By Sri. R.V. Bhat Advocate)

- Vs -

Defendants : 1. Sri. Ganesh Prabhakar Naik,
Age 32 years, Occ: Business,
R/o House No.1031,
Vaman Ashram Road, Karwar.

2. Sri. Girish Prabhakar Naik,
Age 28 years, Occ: Business,
R/o House No.1031,
Vaman Ashram Road, Karwar.

(By Sri. G.N. Jambavalikar Advocate)

IN IA NO.III**Applicants:**
DefendantsSri. Ganesh Prabhakar Naik
and Another**- Vs -****Opponent:**
Plaintiff

Smt. Seema W/o Late Prabhakar Naik

**Details indicated vide Circular No.RJ.No.163/2023 dated
24-08-2023 by Hon'ble High Court of Karnataka**

<i>i</i>	Provision under which the application is filed	Order VI Rule 17 CPC
<i>ii</i>	Relief sought for	Amendment of written statement
<i>iii</i>	The date on which the application is filed	15-09-2025
<i>iv</i>	Number of the application	IA.No.III
<i>v</i>	The date on which the objections are filed by different opponents	16-09-2025
<i>vi</i>	The date on which the orders were passed on the said application	09-10-2025

ORDER

Defendants have filed this interlocutory application under Order VI Rule 17 CPC praying the Court to grant leave to amend their written statement.

2. In support of the application, the 1st defendant has filed affidavit stating that they have filed written statement.

But while filing written statement some of the documents of his mother were not available and they were missing. Now he could find those documents and after going through the said documents he found that the written statement is to be amended to add some pleadings which are important. Hence it is prayed to allow the application and permit them to amend the written statement.

3. To the above application, the plaintiff has filed objections contending that the application is filed at the belated stage and therefore the same is not maintainable in law and on facts. It is contended that the case is now posted for defendants' evidence. The application is filed without assigning any reasons. Further no purpose will be served by allowing the application. The proposed amendment is of no use and the same is not required for any purpose. The intention of the defendants is to drag on the case. Therefore the application is filed only to drag the matter. With these, the plaintiff has sought for dismissal of the application with costs.

4. Learned counsel for the plaintiff Sri. R.V. Bhat and the learned counsel for the defendants Sri. G.N. Jambavalikar have been heard on the application.

5. I have perused the above application and entire materials on record.

6. The points that arise for Court's consideration are:

1. *Whether the proposed amendment sought for in the written statement is necessary for the purpose of determining the real questions in controversy between the parties?*

2. *Whether the defendants establish that in spite of due diligence they could not have raised the matter sought to be pleaded by way of amendment before commencement of the trial?*

3. *What Order?*

7. My findings are as under:

Point No.1 : ***Negative***

Point No.2 : ***Negative***

Point No.3 : As per final order
For the following:

REASONS

8. **POINT NO.1:** The candid point involved in this application is with regard to an application filed by the defendants under Order VI Rule 17 of the CPC seeking

amendment of their written statement. Order VI Rule 17 reads as follows:

“17. Amendment of pleadings.-- 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 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.”

9. So, as it is clear from the above provision that the pleadings of parties in a suit may be allowed to be amended, which may be necessary for determining the real question of controversy between parties.

10. The first condition which must be satisfied before the amendment can be allowed by the Court is whether such amendment is necessary for the determination of the real question in controversy. If this condition is not satisfied, the amendment should not be allowed. This is the basic test which governs the Court’s unchartered power of amendment of pleadings.

11. Thus, it is clear that it is the primary duty of the Court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Therefore only if such a condition is fulfilled, the amendment is to be allowed.

12. In that light of the provision extracted above, now let me examine the proposed amendment sought to be carried out by the defendants to their written statement. The amendment sought for by the defendants to their written statement is reproduced herebelow for better reference:

“Proposed amendments:

- 1) At para No.7 1st line the word owner behind it the word **“one of the joint owners”** is to be added.
- 2) At the end of the paragraph No.7 it is to be added as, **“my** mother Jyoti Prabhakar Naik had invested totally Rs.8,44,000/- from borrowing from her parents. My mother had also paid sale consideration of Rs.1,37,500/- to Dumnice W/o. Saver D’coasta Rs.1,37,500/- towards the part sale consideration amount to purchase the property Sy.No.795 Hissa 1 of Chittakula village measuring 00-25-00 further my father borrowed hand loan from my grandfather Ganapati Habbu Rs.80,000/- in the year 1997 so also my father had borrowed hand loan from my grandmother Laxmi Kumbeshwar Habbu Rs.75,000/- in the year 1997 the said amount is yet to be returned to my uncle with interest. My father had also borrowed money from Syndicate Bank, Sadashivgad Rs.10,00,000/- to his business. So

my mother Jyoti was having $\frac{1}{2}$ right in the suit schedule property.”

13. What is argued by the learned counsel for the defendants who filed this application for amendment is that the proposed amendment is necessary in order to add some pleadings which are important. In support of his arguments the learned counsel for the defendants relies upon a judgment of the Hon'ble Apex Court in **Dinesh Goyal @ Pappu Vs. Suman Agarwal (Bindal) & Ors. [SLP (Civil) No.30324/2019]**.

14. Per contra, the learned counsel for the plaintiff has argued that the amendment now sought to be introduced by the defendants to their written statement is not at all necessary to decide the lis between the parties and therefore he submits that there are no grounds to permit amendment of their written statement.

15. Before advertng to the necessity of the proposed amendment, it is useful to refer the affidavit filed in support of this application for amendment. The affidavit filed by the 1st defendant reads as under:

“That we have filed written statement on behalf of the defendants No.1 and 2 however at that time some of mothers documents were not available they are missing now I could find those documents in after going through

the documents it is found that the written statement filed by us is to be amended to add some pleadings which are important. If the pleadings are not amended we will be put into great irreparable loss. Hence this affidavit in support my application to amend the written statement.”

16. On going through the contents of the affidavit filed by the 1st defendant as extracted above, at the outset, it can be noticed that except stating that the pleadings now sought to be amended is important, nothing is forthcoming as to how the proposed amendments are necessary for determining the real questions in controversy involved in the present suit. No bonafides could be seen in bringing the proposed amendment at this stage.

17. In addition to the above, a careful perusal of the proposed amendments as shown in the present application shows that the defendants have intended to add certain pleadings with respect to the fact that their mother had invested money towards payment of sale consideration etc. The said fact hardly matters to decide this lis.

18. It is also to be noted that the plaintiff has sued the defendants for partition claiming 1/3rd share in the suit schedule properties contending that their father Late Prabhakar Naik had purchased the suit schedule properties which were his self acquisition. Hence in this view of the

matter, this Court is of the view that the Court is conscious of the legal position that the Court while considering the application for amendment of pleadings cannot go into the merits of present application, however, having regard to the nature of suit and the claim being put forth by the plaintiff for partition of the properties acquired by their father Late Prabhakar Balakrishna Naik, whether or not the mother of the defendants had invested money and the fact that their father had borrowed money from Syndicate Bank , Sadashivgad Branch to the tune of Rs.10,00,000/- for his business as sought to be pleaded by way of amendment would be inconsequential and those facts sought to be pleaded by the defendants appear to be irrelevant and it hardly matters to decide the real questions in controversy between the parties.

19. Factors to be taken into consideration while dealing with applications for amendments are given by the Hon'ble Apex Court in **(2009) 10 SCC 84 – RAVAJEETU BUILDERS AND DEVELOPERS vs. NARAYANASWAMY AND SONS.** They are as follows:

“63. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

- (1) Whether the amendment sought is imperative for proper and effective adjudication of the case;**
- (2) Whether the application for amendment is bonafide or malafide;**
- (3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;**
- (4) Refusing amendment would in fact lead to in justice or lead to multiple litigation;**
- (5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and**
- (6) As a general rule, the court should decline amendments, if a fresh suit on the amended claims would be barred by limitation on the date of application.”**

20. Bearing the above legal position in view, I have carefully considered the case and contention of both parties on this application. On perusal of the records, as already observed, the facts to be pleaded by way of amendment to written statement are not at all necessary having regard to the case and contentions of the parties and the questions in controversy involved in the lis. It appears to the Court that the defendants have sought to amend their written statement only to drag the proceedings. Except a casual approach by the defendants, there is no substance in the proposed amendment.

21. It appears to the Court, no fruitful purpose would be served in allowing the amendment, because the facts sought to be pleaded by way of amendment would not constitute a ground of defence for the defendants in this suit. Therefore this Court is of the opinion that the amendment sought for cannot be considered to be imperative for proper and effective adjudication of lis between the parties. Hence without much discussion, I conclude that the proposed amendment sought for by the defendants is not necessary for determining the real questions in controversy between the parties. Accordingly I answer Point No.1 in the '**Negative**'.

22. **POINT NO.2** : Next comes the question whether the defendants have shown due diligence for not pleading the facts which are the subject matter of amendments before commencement of the trial.

23. The amended CPC mandates that amendment of pleadings should be permitted before commencement of evidence, unless for an exceptional reason.

24. Order VI Rule 17 CPC confers wide discretion in a Court to allow either party to alter or amend his pleadings at any stage of the proceedings on such terms as it deems fit. Such discretion, however, must be exercised judicially and in consonance with well-established principles of law. The

proviso as inserted by the Amendment Act, 2002, however, puts further restriction on the power of the Court in allowing amendment.

25. The Hon'ble Apex Court in **AIR 2008 SC 2234 – CHANDER KANTA BANSAL vs. RAJINDER SINGH ANAND**, has held that “the parties should show due diligence for not pleading the facts which are subject matter of the amendment at the earliest. If there is no due diligence, amendment should not be permitted.”

26. What is '**due diligence**' has though not be defined in CPC, but has then been explained by the Hon'ble Supreme Court in the aforesaid decision as follows:

“The words “due diligence” have not been defined in the Court. According to Oxford Dictionary (Edn.2006), the word “diligence” means careful and persistent application or effort. “Diligent” means careful and steady in application to one’s work and duties, showing care and effort. As per Black’s Law Dictionary (18th Edn.), “diligence” means a continual effort to accomplish something, care; caution; the attention and care required from a person in a given situation. “Due diligence” means the diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation. According to Words and Phrases by Drain-Dyspnea (Permanent Edn.13-A) “due diligence”, in law, means doing everything reasonable, not everything possible. “Due diligence” means reasonable diligence; it means such diligence as a prudent man would exercise in the conduct of his own affairs.”

27. The Hon'ble Apex Court in the case of **J. SAMUEL vs. GATTU MAHESH** reported in **(2012) 2 SCC 300**, has held as follows:

“20. A party requesting a relief stemming out of a claim is required to exercise due diligence and it is a requirement which cannot be dispensed with. The term “due diligence” determines the scope of a party’s constructive knowledge, claim and is very critical to the outcome of the suit.”

28. The Hon'ble Apex Court again, in **(2019) 4 SCC 332 – M. REVANNA vs. ANJANAMMA**, has held as under:

“An application for amendment may be rejected if it seeks to introduce totally different, new and inconsistent case or changes the fundamental character of the suit. Order 6 Rule 17 CPC prevents an application for amendment after the trial has commenced unless the Court comes to the conclusion that despite due diligence the party could not have raised the issue. The burden is on the party seeking amendment after commencement of trial to show that in spite of due diligence such amendment could not be sought earlier.”

29. Our Hon'ble High Court in **(2020) SCC Online Kar 5582 -- C. LAXMINARAYANA vs. N. NARASIMHAYYA**, has held as follows:

“9. It is relevant to note that in agricultural properties, the boundaries to the schedule plays a major role in survey number of the property and therefore, in view of the provisions of Order VI, Rule 17 where there is an embargo that no application shall be allowed after the trial is commenced unless there is due diligence which is shown by the parties seeking for such amendment and it is also to be noted that such prayer for amendment should be taken into consideration having regard to any prejudice that could be caused to the other side. The petitioner cannot seek amendment as a matter of right and nor does the Court have absolute discretion of amendment in view of the proviso to Order VI Rule 17.”

30. In view of the principles laid down in the aforesaid decisions, the situation of the present case is necessary to be noticed. It is trite law that reasons must be assigned to explain the delay in filing the application. Clearly enough an application for amendment of pleadings can be allowed even after the commencement of trial if 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. Now let me examine the affidavit so filed by the 1st defendant in support of the application seeking amendment.

31. The affidavit filed by the 1st defendant in support of the application nowhere indicates plausible explanation for the delay. What is stated in the affidavit is already extracted hereinabove. What is indicated in the affidavit is that some of the mother's documents were missing and some important pleadings are to be added. This can hardly be said to be plausible explanation for the delay. Notably, the pleadings sought to be added are not at all important as projected by the defendants.

32. Admittedly, in the case on hand, the trial has commenced on 02-06-2025 as the issues were settled on that day. The plaintiff has examined herself as PW.1 on 28-06-2025. PW.1 has been fully cross examined on behalf of the defendants and the plaintiff's side evidence has been closed and the matter has reached the evidence of defendants. Records further disclose that the defendants have taken 4 – 5 adjournments to lead evidence and ultimately they have come up with the present application for amendment of the written statement.

33. On a close scrutiny of the affidavit filed by the 1st defendant in support of the present application for amendment, it can be noticed that there is nothing which indicate any due diligence being shown to entertain the application for amendment at this stage of the matter. Suffice

it to state that no due diligence has been established by the defendants.

34. Furthermore, the averments made in his affidavit does not satisfy the requirements of Order VI Rule 17 CPC without giving the particulars which would satisfy the requirement of law that the matters now sought to be introduced by the amendment could not have been raised earlier in respect of due diligence.

35. The Hon'ble Apex Court in the above referred judgments clearly held that it is the primary 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 condition is fulfilled, the amendment is to be allowed. The proviso restricts the power of the Court and puts an embargo on the exercise of its jurisdiction.

36. Taking into consideration all the above, this Court is of the considered opinion that the present application lacks all the parameters more particularly the one which is mandated in Proviso to Order VI Rule 17 CPC. Unless the defendants show that in spite of due diligence they could not have raised the matter sought to be pleaded by way of amendment before commencement of the trial, it is not possible to say that the defendants are entitled to seek

amendment of their written statement at this stage of the matter. No due diligence is established by the defendants. Hence in view of all these, I answer Point No.2 in the '**Negative.**'

37. **POINT NO.3** : As discussed above, firstly, the proposed amendment sought for by the defendants is not necessary for deciding the lis. Secondly the defendants have failed to establish that in spite of due diligence they could not have raised the matter before commencement of trial.

38. Law is well settled that leave to amend pleadings will be refused where the amendment is not necessary for the purpose of carving out the real question in controversy between the parties. As discussed above, the "real controversy" test is the basic test and it is the primary duty of the Court to decide whether such amendment is necessary to determine the real dispute between the parties. If it is not, the amendment would have to be refused.

39. Adverting to the decision relied upon by the learned counsel for the defendants reported in **2024 SCC OnLine SC 2615 – DINESH GOYAL @ PAPPU vs. SUMAN AGRAWAL (BINDAL)**, our Hon'ble High Court in Writ Petition No.16411 of 2025 (GM-CPC) – Smt. Venkatamma Namasivayamm Since dead by LRs Vs. Sri. K. Anil Kumar and Others (DD: 08-07-

2025), referring to the aforesaid decision of Hon'ble Supreme Court, has observed as under:

“The Apex Court holds that any and all delays in judicial processes should be avoided and minimised to the largest extent possible. However, not in all cases can delay determine the fate of the suit. The defendant therein had contended that the time gap between the written statement to the suit and the present application seeking leave to amend is unexplained. Even then the Apex Court permitted the amendment on the ground that it was an issue of a Will, which will remain open even after disposal of the suit and result in multiplicity of litigation. The said judgment is distinguishable, on the facts obtaining in the case at hand, without much *ado*. **Though Order VI Rule 17 of the CPC as amended, permits amendments to pleadings at any stage, but tempers such liberty with a proviso that postulates the necessity of due diligence. The rationale is unmistakable, it is to curb interminable litigation and to ensure trials are not derailed by belated pleas. Proviso to Rule 17 of the CPC, is thus, not an ornamental appendage, but a substantive limitation.**”

40. On careful reading of the aforesaid decisions, this Court is of the view that the decision relied upon by the learned counsel for the defendants would not aid them in any manner as the same could be distinguished on facts and circumstances of the case also.

41. In view of all these, the conclusion is that the defendants have failed to make out valid grounds to permit amendment of their written statement as prayed for.

Therefore the subject application is liable to be ***rejected***.
Accordingly I make the following :

ORDER

- i) I.A.No.III filed by the defendants under Order VI Rules 17 CPC is ***rejected***.
- ii) There is no order as to costs.

(Dictated to the Stenographer directly on computer, typed by him, corrected and then initialed by me and pronounced in the Open Court on the 9th day of October, 2025)

(Ganesha Padiyar U)
Addl. Senior Civil Judge,
Karwar