

ORDER ON IA.NO.5

Plaintiffs have filed this application under Order VI rule 17 CPC permitting them to amend the plaint.

2. In support of the application, the 1st plaintiff Sri. Udey Dinakar Desai has sworn to an affidavit stating that the defendants have raised objections that Sy.No.630/3 of Chittakula Village of Karwar Taluk is not included in the suit schedule property. Therefore the plaintiffs have sought amend the plaint to include the said property in the plaint schedule.

3. Counsel for defendants No.2 and 3 has opposed the present application by filing objections contending that the application is contrary to law and true facts of the case. It is contended that the application is filed after commencement of evidence and therefore the amendment cannot be permitted. It is further contended that the plaintiffs are not entitled to get away from the admission made in the plaint. Hence it is prayed to reject the application with heavy costs.

4. Having heard the learned counsel for both the parties and upon perusal of the IA and the entire materials on record, the only point that essentially emanates for consideration of this Court is :

“Are there any grounds to permit amendment to the plaint as prayed?”

5. My answer to the above point for consideration is in the *affirmative* for the following:

REASONS

6. On perusal of the entire materials on record, it comes to be seen that the plaintiffs have filed this suit for partition. The defendants have resisted the suit by filing written statement and as such based on the pleadings this Court has framed as many as six issues and posted the matter for trial. It is no doubt true that the 1st plaintiff has examined himself as PW.1 and documents have been marked as Ex.P.1 to Ex.P.24 in his deposition. Thus it is clear that the amendment now sought for is after the commencement of the trial.

7. It is also pertinent to note that PW.1 is yet to be cross-examined by the defendants.

8. At that stage, the plaintiffs have come up with the present application for amendment only to include a land bearing Sy.No.630/3 of Chittakula Village of Karwar Taluk on the premise that the defendants have specifically contended that the said property is not included in the suit. Hence in this view of the matter, in the considered opinion of this Court, the proposed amendment appears to be imperative for deciding the questions in controversy involved in the present suit which has been filed for partition of immovable properties. Therefore the plaintiffs are justified in seeking the present amendment. Moreover, the contention of the defendants No.2 and 3 that if the amendment is permitted it would amount to withdrawal of admission in the plaint cannot be accepted. Moreover if the amendment is permitted no prejudice will be caused to the defendants. Rather if permitted, the defendants will get an opportunity to file additional written statement. It is

also pertinent to note that merely because amendment is permitted it does not mean that the plaintiffs are entitled to the reliefs on the amended facts.

9. The Hon'ble Apex Court in **AIR 2006 SC 1647 – Rajesh Kumar Aggarwal and Others Vs. K.K. Modi and Others**, has observed and held that “while considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment.”

10. The Hon'ble Apex Court in **AIR 2004 SC 4102 – Pankaja and Another Vs. Yellappa (Deceased) by LRs and Others**, has held that “delay in filing application for amendment, on its own, is not a ground for rejecting application.”

11. Our Hon'ble High Court in **2020 (2) AKR 321 – Sangavva Kaladagi and Others Vs. Shantawwa Sajjan and Another**, has held that “properties could be included in suit for partition at any point of time by way of amendment of plaint”.

12. The Hon'ble Apex Court in **2024 SAR (Civ) 1185 - Dinesh Goyal @ Pappu Vs. Suman Agarwal (Bindal) and Others**, has held that “all amendment necessary for determining real questions in controversy to be allowed and hyper-technical approach to be avoided.”

13 . Taking into consideration the principles enunciated by the Hon'ble Apex Court and our Hon'ble High Court in the decisions supra and having regard to the facts and circumstances of the case at hand, this Court is of the considered opinion that the peculiar circumstances of the case at hand impel this Court to hold that the plaintiffs have made out due diligence in not raising the matter before commencement of the trial and that the plaintiffs have satisfied the Court that the proposed amendment is imperative for deciding the real questions in controversy involved in the suit.

14. In view of all these, this Court is of the opinion that the amendment as sought for needs to be allowed. Hence the application for amendment deserves to be allowed. Accordingly, answering the point for consideration in the *affirmative*, I make the following :

ORDER

- (I) IA.No.5 is *allowed*.
- (ii) In the result, the plaintiffs are permitted to amend the plaint as prayed for in the above IA.
- (iii) For amendment and furnishing amended copy of the plaint by 07-04-2025.

(Dictated to the Stenographer directly on computer, typed by him, corrected and then initialed by me and pronounced in the Open Court on the 1st day of April, 2025)

Sd/-
Addl. Senior Civil Judge & JMFC,
Karwar.