

KAUK510004832023



Presented on : 05-06-2023

Registered on : 05-06-2023

Decided on : 16-10-2025

IN THE COURT OF CIVIL JUDGE & JMFC, HALIYAL
AT: HALIYAL, UTTARA KANNADA

Dated this 16th day of October, 2025

PRESENT

Smt. Geeta. B.A.LL.B (Hon's) LL.M.,
Civil Judge and JMFC, Haliyal

ORIGINAL SUIT NO.64/2023

BETWEEN:

1. Shri. Parashuram Channappa Shapurkar
@ Kapurkar,
Age: 46 years, Occ: Business,
R/o. Medargalli, Haliyal,
Tq: Haliyal, Dist: Uttar Kannada.

.....Plaintiff

(By Sri. P.B.A., Adv.,)

AND:

1. Smt. Parvati Kom. Somning Pakari,
Age: 56 years, Occ: Agriculture,
R/o. Chibbalgeri, Village,
Tq: Haliyal, Dist: Uttar Kannada.

....Defendant

(By Sri. CVN/SLS/WJS/Miss.PNM, Advs.,)

I.A.No.VI**Applicant/Deft : Smt. Parvati Kom. Somning Pakari****-Vs.-****Opponent/Pliff : Shri. Parashuram Channappa
Shapurkar @ Kapurkar****ORDER ON I.A.NO.VI**

The defendant filed I.A No.VI under Order VI Rule 17 R/w Section 151 of C.P.C., praying to permit the defendant to amend written statement in the interest of justice and equity.

The proposed amendment is as under:

- 1) In the Written Statement para No.5 line No.10 and in line No.19 the word of "Gift deed" kindly deleted and in this place the word "Will" may kindly be added.
- 2) In the Written Statement para No.9 line No.22 and in line No.32 the word of "Gift deed" kindly deleted and in this place the word "Will" may kindly be added.
- 3) In the Written Statement para No.12 prayer Para Line No.2 the word of "Gift deed" kindly deleted and in this place the word "Will" may kindly be added.

2. In the affidavit, the defendant stated that, the plaintiff filed instant suit for the relief of declaration and cancellation of records of suit properties. The defendant has filed detailed written statement but, due to typing mistake and technical reason, the word "Gift deed" has been typed in the place of "Will". Therefore,

said word has to be corrected in the written statement. With these contentions, the defendant prayed to allow the application.

3. The plaintiff counsel filed objections to the application contending that, suit is posted for cross-examination of PW.1 and at this belated stage, no application for amendment of the written statement is permissible, therefore, the application is liable to be rejected. It is stated that, the defendant earlier filed O.S No.171/2007 against the present plaintiff and same is dismissed on 11.07.2008. The defendant produced Ex.P1 i.e., CTS extract in the said suit and contended that, he has acquired the right over the said property by virtue of the Will dated 21.07.1994 but, failed to produce said Will and failed to prove the same. Therefore, there is no scope for the defendant again to rely upon said Will in the instant suit. The said document has not seen the light of the day till today and the claim based on such a document is also time barred. If the proposed amendment is allowed, it will change the entire contentions raised by the defendant in the suit. Therefore, proposed amendment is not permissible. With these contentions, the plaintiff prayed to reject the application.

4. Heard both counsels.

5. Now the points that arise for consideration are as under;

1. Whether defendant has made out grounds to permit him to amend the written statement?

2. What order?

6. Answers on the above points are as under;

Point No.1 : In the Affirmative

Point No.2 : As per final order

for the following;

REASONS

7. **POINT NO.1:-** The plaintiff filed this suit for the relief of cancellation of City Survey entry, declaration and consequential relief of permanent injunction. Now the case is at the stage of cross-examination of PW.1 and defendant filed this application praying to permit him to amend the written statement and insert the word "Will" in the place of "Gift deed". The plaintiff counsel strongly objected to the application contending that, at this belated stage, the alleged amendment cannot be allowed. Further, in spite of contention with respect to Will in O.S No.171/2007, the defendant has not produced said Will before the Court. Therefore, he cannot be relied on said Will in the present suit.

8. On perusal of the records and written statement filed by the defendant, it appears that, by oversight the word "Gift deed" has been typed in the place of "Will" and if the proposed amendment is allowed, at this stage of the suit, no hardship will be caused to the plaintiff. Further, if the alleged amendment is made, the plaintiff has every opportunity to disprove the "Will" on which the defendant relies. Further, whether the alleged Will is relevant or not, reliable document or not and whether it is proved or not, has to be looked into at the time of appreciation of evidence. At this stage, the question to be looked into is whether the word "Will"

can be inserted in the place of "Gift deed". On perusal of the records, it appears that, by oversight the word "Gift deed" has been typed in the place of "Will". Therefore, said amendment has to be permitted. Further, if the alleged amendment is allowed, it will not change the nature of suit or cause of action. Therefore, the application filed by defendant has to be allowed. Hence, **I answer Point No.1 in the Affirmative.**

9. POINT NO.2 :- In view of discussion on Point No.1 and for the reasons stated therein, I proceed to pass the following;

ORDER

I.A.No.VI filed by the defendant under Order VI Rule 17 R/w Section 151 of C.P.C., is hereby allowed.

The defendant is permitted to amend the written statement.

For amendment and amended W.S.

No order as to costs.

(Dictated to the Stenographer directly on system, typed by her, corrected by me, signed & then pronounced in the Open Court on this the **16th day of October, 2025**)

Sd/-
(Geeta)
Civil Judge & JMFC.,
Haliyal