

IN THE COURT OF THE SENIOR CIVIL JUDGE AND ACJM,

KARKALA

Present: Smt.Sharmila C.S., B.A.L., LL.M.,
Senior Civil Judge and ACJM, Karkala.

Dated: This the 10th day of February , 2025.

O.S.No.67/2017

Smt. Rathnamma and others. ..Plaintiffs
Versus -
Sri. Namiraja Pandi and others ..Defendants

PARTIES TO I.A.NO.31

Sri. Namiraja Pandi,
Aged 84 years,
S/o. Jinnappa Hegde,
R/at. Chikkalbettu, Sanur Village,
Karkala taluk, Udupi District. . .. Applicant/
1st defendant

- vs. -

1. Smt. Rathnamma
Aged 74 years,
W/o. Late Devaraj Jain,
R/at. Rajagiri House, Kanchana Village
and Post, Via Uppinangady,
Puttur Taluk, D.K. District.
2. Smt. Saraswathi,
Aged 71 years,
W/o. Prabhakara Athikari,
D/o. Jinnappa Hegde,
R/at. Shanthinilaya, Jayanthinagara,
6th Cross, Kukkundoor Village,
Karkala Taluk, Udupi District.
3. Mrs. Surekha V. Hegde,
Aged 46 years,

D/o. Late Sumanaji Amma,
W/o. Vijay Kumar Hegde,
R/at. Padmavarna, Post Kallabettu,
Gantalkatte, Moodabidri,
Mangalore Taluk, D.K. District.

4. Mrs. Sujatha Shivakumar,
Aged 40 years,
D/o. Late Sumajani Amma,
W/o. Shivakumar,
R/at. Kurpady House, Ajekar,
Marne Village, Karkala Taluk,
Udupi District.

.. Opponents/plaintiffs

i.	Provision under which the application is filed	Order VI Rule 17 and Section 151 of CPC
ii.	Relief sought for	To amend written statement
iii.	The date on which the application is filed	22-01-2025
iv.	Number of the application	I.A.No.31
v.	The date on which the objections are filed by different opponents	24-01-2025
vi.	The date on which the orders were passed on the said application.	10-02-2025

ORDER ON I.A.NO.31 FILED UNDER ORDER VI RULE 17

AND SECTION 151 OF C.P.C.

Application is filed by 1st defendant seeking amendment of written statement dated 06-09-2017.

2. 1st defendant has deposed that due to oversight the present amendment now sought could not be carried out in the earlier application . That the omission is genuine and accordingly prays to allow the application.

3. Counsel for the plaintiffs objects that by the present amendment, applicant is trying to introduce a new case at the belated stage and accordingly prays to dismiss the application.

4. Heard from the counsel for plaintiffs and counsel the 1st defendant .

5. The following point arise for my determination.

“Whether the proposed amendment is necessary at this stage?”

6. My answer to the above point is in ‘affirmative’, for the following

REASONS

7. The present suit is for partition of the properties, where the matter went on for reporting settlement. It appears that the parties have already settled the matter and are only delaying to report the same before this court. Therefore, this court directed the parties to proceed with the case and the evidence of the plaintiff was concluded. Now the case was posted for defendants evidence, where the 1st defendant took commission to examine himself as he was unable to appear before this court. At this stage, the present application is filed.

8. 1st defendant has deposed that earlier he had filed an application for amendment on 18-06-2020 i.e., I.A.No.II to amend the written statement, but inadvertently due to oversight the amendment now sought in this application were not sought in the said I.A.No.II and the amendment is genuine, accordingly prays to allow the application. It is further urged and also argued that the proposed amendment is not introduction of new proposition nor withdrawal of any admission, but merely a

rectification of the already existing pleading to remove the ambiguity and to avoid the confusion.

9. A perusal of the amendment which is sought to be carried goes to show the deletion of para No.5 in the original written statement, where it is stated that widow of Late K. Jinnappa Hegde was also entitled to 1/3rd right in the property and that she has executed the Will in favour of the 1st defendant. Thus amendment would be absolutely contradicting to the earlier averments made in the written statement. It was argued that the 1st defendant is not trying to propound the Will as alleged by them, and is trying to bring out the fact that before Hindu Succession Act came into force, there was a separate Act for Jain community, where they were governed by the said Act. Thus pleading also appears to be contradictory to the earlier amendment sought for by the 1st defendant, for which I.A.No.II dated 18-06-2020 was also permitted. On going through the cross-examination of P.W.1 also, this court could raise inference that the pleading at para No.5 would be admittedly contrary to the other pleadings of the defendants.

Therefore, the present amendment needs to be permitted to be carried out.

10. The main objection of the plaintiff is that the application is filed at belated stage, i.e., after completion of the trial. However the pleadings if contrary would affect the case of the 1st defendant. However the plaintiffs also have the right to defend the alleged amendment, but would not be put to hardship and inconvenience. Though Code of Civil Procedure provides that no amendment should be permitted after commencement of trial, in view of ambiguity that would arise in future if the amendment is not permitted, this court is of the considered opinion that the amendment though is at a belated stage, needs to be permitted. Accordingly holding that the proposed amendment is necessary at this stage, the above point is answered in the affirmative.

11. In view of the above reasoning, I proceed to pass the following :

ORDER

I.A.No. 31 filed by the 1st defendant under Order VI Rule 17 and Section 151 of C.P.C., is here with allowed with cost of Rs.3,000/-.

Counsel for 1st defendant is permitted to carry out amendment to the written statement dated 06-09-2017 .

(Dictated to the Stenographer, transcribed by her , transcript corrected and then pronounced in Open Court on this the 10th day of February, 2025.)

(SHARMILA C.S.)
Senior Civil Judge & ACJM, Karkala