

KAVN300006582020



**IN THE COURT OF THE CIVIL JUDGE & JMFC.,**  
**AT: HAGARIBOMMANAHALLI**

DATED THIS THE 11<sup>th</sup> DAY OF FEBRUARY - 2026

PRESENT

**Sri. SAYED MOHIUDDIN URF KHAWAJA PEERAN**, B.A., LL.B. (Spl.),  
CIVIL JUDGE & JMFC., HAGARIBOMMANAHALLI

**O.S.No.67/2020**

PLAINTIFF/s : **Gundru Hanumavva W/o Belgundi Kariyappa**  
**D/o Gundru Ningappa,**  
Dead her LR's brought on record as per orders  
passed on I.A.No. V dated 03.11.2023.

**P1 a) Belgundi Basavaraja**  
**S/o Late Gundru Hanumavva,**  
Aged about: 32 years, Occ: Agriculturist,  
R/o Uppanayakanahalli Village,  
H.B.Halli Taluk & Vijayanagara District.

**P1 b) Belgundi Rekha**  
**D/o Late Gundru Hanumavva,**  
Aged about: 30 years, Occ: Housewife,  
R/o Uppanayakanahalli Village,  
H.B.Halli Taluk & Vijayanagara District.

**Vs.**

DEFENDANTS/: **1. Gundru kadlabalappa S/o Ningappa**  
Aged about: 59 years, Occ: Agriculturist,

**2. Gundru Basama W/o Late Thindappa**  
Aged about: 51 years, Occ: Agriculturist,

**3. Gundru Anjinappa S/o Ningappa**  
Aged about: 52 years, Occ: Agriculturist

All are R/o Keshavarayanabandi Village,  
H.B.Halli Taluk & Vijayanagara District

**I.A.No.VII**

APPLICANT/DEFENDANT No.3/s: **Sri. Gundru Anjinappa & Others**

(Rep. by Sri.**B.M.A.**, Advocate.)

**Vs.**

RESPONDENT/PLAINTIFF/s: **Smt. Gundru Hanumavva dead  
her Lrs Belagundi Basavaraja  
and Others and Other**

(Defendant No.1 and 2 Rep.by Sri.**G.M.D.**, Advocate)

(Defendant No.3 Rep.by Sri.**K.J**, Advocate)

**ORDER ON I.A.No.VII FILED BY THE DEFENDANT NO.3  
UNDER ORDER VI RULE 17 R/w SEC.151 of CPC:**

The defendant No.3 has filed the above said I.A.No.VII under Order VI Rule 17 R/w Sec.151 of CPC for amendment of written statement.

Proposed amendment is as under;

**1. Delete at Page No.5 Para No.12b, Line No.8 word  
“item No.2” mention here.**

**2. Add at Page No.5 Para No.12b Line No.8 word  
“item No.5” following to be added.**

**2.** In the accompanying affidavit to the IA., it is stated by the defendant No.3 that the plaintiff has filed the present

suit against the defendants for the relief of partition and separate possession with respect of suit schedule properties. Due to typographical mistakes and inadvertance in written statement page No.5, Para No.12, line No.8 item No.2 was wrongly mentioned, therefore it is just and necessary to amend the same as Item No.5. the said amendment is very much necessary for proper adjudication of the matter. If the said application is allowed no injustice will be caused to the other side. If the application is not allowed he will be put to hardship. Hence, he prays to allow the IA.

**3.** To the said application, the plaintiff has filed the objections by denying the contention of the defendants, and further contended that the said application is not maintainable. The examination in chief of PW1 to PW4 is already recorded at this the defendant No.3 has filed the said application on the basis of false reasons. The said amendment will be change the nature of the suit and cause of action. The defendant No.3 has filed the said application with an intention to fill-up the lacuna. If the said application is

allowed she will be put to hardship. Hence she prays to dismiss the application.

4. Heard the arguments and perused the records.

5. The following points arise for my consideration:

**1. Whether the defendant No.3 has made out proper grounds to allow the I.A.No.VII?**

**2. What order?**

6. My answers to the above points are as follows:

Point No.1 : In the **AFFIRMATIVE**

Point No.2 : As per the final order for the following: -

### **REASONS**

7. **Point No.1** :- The present suit is filed by the plaintiff against the defendants for the relief of partition and separate possession with respect of suit schedule properties. In the present case on hand PW1 to PW3 have been examined before the Court. When the case was posted for cross examination of PW1 to PW3. The defendant No.3 has filed the said application for amendment of written statement. The plaintiff has objected for the same.

8. Order **6 Rule 17** of ***Civil Procedure Code., 1908*** provides as under:

***"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 of 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. As stated above the present suit is filed by the plaintiff against the defendants for the relief of partition and separate possession with respect of suit schedule properties. Defendant No.3 in his written statement Para No.12 taken a contention of earlier partition, in Para No.12(b) the defendant No.3 has contended that the plaintiff has got suit item No.2. Now the defendant No.3 is willing to change the same as suit item No.5. The burden of proving the earlier partition and allotment of alleged suit item No.5 to the plaintiff is on defendant No.3. On going through the same it appears that the said amendment will not introduce any new facts. The said amendment will not withdraw any admissions and further it appears that, the said amendment is necessary for

determining the real question in controversy between the parties. The said amendment will not set up any entirely new case.

**10.** In the reported decision **(2022) SCC Online SC 1128 (Life Insurance Corporation of India vs. Sanjeev Builders Private Limited & Anr.)** in **Para No.70** of the said Judgment the **Hon'ble Supreme Court of India** held as under.

*70. Our final conclusions may be summed up thus: (i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negated.*

*(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 of the CPC.*

*(iii) The prayer for amendment is to be allowed.*

*(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and*

*(ii) to avoid multiplicity of proceedings, provided*

*(a) the amendment does not result in injustice to the other side,*

*(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and*

***(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).***

***(iv) A prayer for amendment is generally required to be allowed unless***

***(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,***

***(ii) the amendment changes the nature of the suit,***

***(iii) the prayer for amendment is malafide, or***

***(iv) by the amendment, the other side loses a valid defence.***

***(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.***

***(vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.***

***(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.***

***(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.***

***(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.***

***(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed.***

*Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.*

*(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See *Vijay Gupta v. Gagninder Kr. Gandhi & Ors.*, 2022 SCC OnLine Del 1897).*

11. In the reported decision **(2007) 5 SCC 602 USHA BALASHAHEB SWAMI AND OTHERS V/S KIRAN APPASO SWAMI AND OTHERS** in *Para No.19, 20 ,21* of the said Judgment the **Hon'ble Supreme Court of India** held as under.

*19. It is equally well settled principle that a prayer for amendment of the plaint and a prayer for amendment of the written statement stand on different footings. The general principle that amendment of pleadings cannot be allowed so as to alter materially or substitute cause of action or the nature of claim applies to amendments to plaint. It has no counterpart in the principles relating to amendment of the*

*written statement. Therefore, addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement would not be objectionable while adding, altering or substituting a new cause of action in the plaint may be objectionable.*

*20. Such being the settled law, we must hold that in the case of amendment of a written statement, the courts are more liberal in allowing an amendment than that of a plaint as the question of prejudice would be far less in the former than in the latter case [see B.K. Narayana Pillai v. Parameswaran Pillai (2000(1) SCC 712) and Baldev Singh & Ors. v. Manohar Singh (2006 (6) SCC 498)]. Even the decision relied on by the plaintiff in Modi Spinning (supra) clearly recognises that inconsistent pleas can be taken in the pleadings. In this context, we may also refer to the decision of this Court in Basavan Jaggu Dhobi v. Sukhnandan Ramdas Chaudhary (Dead) [1995 Supp (3) SCC 179]. In that case, the defendant had initially taken up the stand that he was a joint tenant along with others. Subsequently, he submitted that he was a licensee for monetary consideration who was deemed to be a tenant as per the provisions of Section 15A of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. This Court held that the defendant could have validly taken such an inconsistent defence. While allowing the amendment of the written statement, this Court observed in Basavan Jaggu Dhobi's case (supra) as follows :-*

*"As regards the first contention, we are afraid that the courts below have gone wrong in holding that it is not open to the defendant to amend his statement under Order 6 Rule 17 CPC by taking a contrary stand than was stated originally in the written statement. This is opposed to the settled law open to a defendant to take*

***even contrary stands or contradictory stands, the cause of action is not in any manner affected. That will apply only to a case of the plaint being amended so as to introduce a new cause of action."***

***21. As we have already noted herein earlier that in allowing the amendment of the written statement a liberal approach is a general view when admittedly in the event of allowing the amendment the other party can be compensated in money. Technicality of law should not be permitted to hamper the Courts in the administration of justice between the parties. In the case of L.J. Leach and Co. Ltd. v. Jardine Skinner and Co. [AIR 1957 SC 357], this Court observed "that the Courts are more generous in allowing amendment of the written statement as the question of prejudice is less likely to operate in that event". In that case this Court also held "that the defendant has right to take alternative plea in defence which, however, is subject to an exception that by the proposed amendment the other side should not be subjected to serious injustice."***

**12.** On looking through the facts and circumstances of the case, I am of the opinion that if the amendment application is allowed no injustice will be cause to the plaintiff. Mere allowing for amendment of pleadings does not means that same is proved. The burden of proving the same as per amendment is lies on the person who sought the amendment. Furthermore, the plaintiff has full opportunity to file the rejoinder to the said amendment. If the said

application is not allowed it cause injustice to the defendant No.3 and further it amounts to multiplicity of the proceedings. If the said application is allowed on cost it would meets the ends of justice. On the basis of above reasons and discussion, I hold **Point No.1** in the **AFFIRMATIVE.**

**13. Point No.2** :- For the aforesaid reasons and discussions made above I proceed to pass the following: -

**ORDER**

I.A.No.VII filed by the defendant No.3 under Order VI Rule 17 R/w Sec.151 of CPC., is hereby allowed on cost of Rs.1,000/-.

The defendant No.3 is permitted to amend the written statement as prayed in the IA.

*(Dictated to the Stenographer, transcribed and computerized by him, corrected by me, and then pronounced in the open court on this the 11<sup>th</sup> day of February 2026.)*

**(SAYED MOHIUDDIN URF KHAWAJA PEERAN)  
CIVIL JUDGE & JMFC., HAGARIBOMMANAHALLI**