

KADG420002552013



IN THE COURT OF THE CIVIL JUDGE AT HARAPANAHALLI.

**Present : Shri.Manu Sharma S.P.,
B.A.LAW.LL.M.
Civil Judge and JMFC, Harapanahalli.**

Dated this 7th day of March 2026

OS No.264/2013

PLAINTIFF/s

1. H.M.Shivaleela D/o
D.M.Veerabasaih, Age about 25 years,
Occ: Agriculture, R/o Tavaragundi
village, Harapanahalli Taluku,
Davanagere District.

2. Smt.D.M.Parvathamma @
Parvathavva W/o D.M.Veerabasaiah,
Age about 50 years, Occ: Agriculture,
R/o Tavaragundi village, Harapanahalli
Taluku, Davanagere District.

(By Sri. K.B.R. Adv)

-Vs.-

DEFENDANT/s

1. Sri.D.M.Veerabasaiah, S/o
Chandrashekaraiyah, Aged about 58
years, Occ: Rtd. Post employee, R/o
Tavaragundi village, Harapanahalli
Taluku, Davanagere District.

2. Smt.D.M.Girijamma, Since dead by
her LRs.

2(a).Smt.H.M.Soubhagyamma W/o
H.M.Rajashekaraiyah and D/o Late
D.M.Girijamma, Aged about 45 years,
Occ: Agriculture and household, R/o
Holulu village, Huvinahadagali Taluku,
Ballari District.

2(b).Smt.D.M.Manjula W/o Mahalingiah
Kondajji and D/o Late D.M.Girijamma,
Aged about 39 years, Occ: Agriculture
and household, R/o Aligilavada village,
Harapanahalli Taluku, Davanagere
District.

2(c).Smt.U.M.Neetravathi @
Maitharamma, W/o U.M.Siddiah, and
D/o Late D.M.Girijamma, Aged about
38 years, Occ: Agriculture and
household, R/o Haluvagalu village,
Harapanahalli Taluku, Davanagere
District.

3.Goudapala Basavarajappa S/o
Channabasappa, Aged about 48 years,
Occ: Agriculture R/o Tavaragundi
village, Harapanahalli Taluku,
Davanagere District.

(D.1 By Sri. O.M.R. Adv)
(D2(a) to 2(c) By Sri.B.H Adv)
(D3 By Sri.S.J.K.Adv)

ORDER ON IA No.XIX

PLAINTIFF
/s/APPLICANT/s

1. H.M.Shivaleela D/o
D.M.Veerabasaih, Age about 25 years,
Occ: Agriculture, R/o Tavaragundi
village, Harapanahalli Taluku,
Davanagere District.

2. Smt.D.M.Parvathamma @ Parvathavva W/o D.M.Veerabasaiah, Age about 50 years, Occ: Agriculture, R/o Tavaragundi village, Harapanahalli Taluku, Davanagere District.

-Vs.-

DEFENDANT/s/OPPONENT/s

1. Sri.D.M.Veerabasaiah, S/o Chandrashekaraiyah, Aged about 58 years, Occ: Rtd. Post employee, R/o Tavaragundi village, Harapanahalli Taluku, Davanagere District.

2. Smt.D.M.Girijamma, Since dead by her LRs.

2(a).Smt.H.M.Soubhagyamma W/o H.M.Rajashekaraiyah and D/o Late D.M.Girijamma, Aged about 45 years, Occ: Agriculture and household, R/o Holulu village, Huvinahadagali Taluku, Ballari District.

2(b).Smt.D.M.Manjula W/o Mahalingiah Kondajji and D/o Late D.M.Girijamma, Aged about 39 years, Occ: Agriculture and household, R/o Aligilavada village, Harapanahalli Taluku, Davanagere District.

2(c).Smt.U.M.Neetravathi @ Maitharamma, W/o U.M.Siddiah, and D/o Late D.M.Girijamma, Aged about 38 years, Occ: Agriculture and household, R/o Haluvagalu village, Harapanahalli Taluku, Davanagere District.

3.Goudapala Basavarajappa S/o
Channabasappa, Aged about 48 years, Occ:
Agriculture R/o Tavaragundi village,
Harapanahalli Taluku, Davanagere District.

ORDER ON IA No.XIV

1. Plaintiff has filed application under Order VI Rule 17 read with Section 151 of CPC for seeking amendment of plaint by adding alternative relief of partition to the prayer column of the plaint.

The Application is supported by the affidavit of Plaintiff

No.1 proposed amendment is as here under:-

:SCHEDULE :

In the plaint prayer column after the relief a), the following relief be added as a1) That in the event of the Plaintiff failure to obtain a decree for declaration of title over the plaint schedule properties as prayed, the suit of the Plaintiffs be decreed by grant of preliminary decree for partition by allotting 1/4th share in all the suit schedule properties and further in the 1/4th of Defendant No.1 by metes and bounds, and be added by way of amendment to the plaint.

2. It is stated in the affidavit that he had filed the suit for declaration and perpetual injunction on the basis of oral family settlement between her and Defendant No.1 who is her father and further as per the family settlement there is no written document

executed by her father regarding handing over the possession of the suit schedule properties towards maintenance of her and her mother. She has further stated that there is no document to establish her title over the suit schedule properties exclusively. She has further stated that suit schedule properties are ancestral and joint family properties of legal heirs of her grandfather . She has further stated that Defendant No.1 is son and Defendant No.2(a) to 2(c) are the daughters of her grand parents. Based on the said contentions Plaintiff prayed for allowing the application.

3. Defendant No.3 has filed objection to the application. It is stated in the objection that suit was filed in the year 2013 and evidence has also been concluded in the present case and matter is posted for arguments. It is further stated that there is no pleading with respect to partition in the plaint. It is further stated that Plaintiff has not produced any document to show relationship between her and Defendant No.1 and 2(a) to 2(c). It is further stated that Defendant No.3 had filed suit for specific performance of contract as per O.S.No.65/2013 against Defendant No.1 and 2 and the same was compromised before Lok-Adalat on 23.02.2013. It is further stated that if the application is allowed it changes the nature of the suit. Based on the said contentions Defendant No.3 prayed for rejection of the application.

4. Based on application and counter the following points arise for my consideration:-

1] Whether Plaintiff has made out grounds to allow application?

2] What Order?

5. Heard the arguments and perused the records.
6. My answers to the above points are as hereunder:-
Point No.1:- In the **Negative**.
Point No.2:- As per final order for following:-

REASONS

7. **Point No.1:-** Plaintiff is seeking amendment by adding the relief of partition in the prayer column of the plaint. It is to be noted that as per the proviso Order VI Rule 17 of CPC no application for amendment will be allowed after the trial has commenced unless Court comes to conclusion that the party in spite of due diligence could not raise the matter before commencement of trial. Here in the present case, matter is reserved for arguments. Plaintiff has not offered any explanation as to why he had not claimed the alternative relief of partition when suit was filed in the year 2013. As indicated in the proviso it is incumbent upon the Plaintiff to show due diligence for not claiming proposed relief at the earliest point of time. Plaintiff has offered the reason that she intends to add the relief of partition as her suit is based on family settlement and there are no

documents to indicate the same. This fact was very well within the knowledge of the Plaintiff when suit was filed and so she had all opportunities to seek for partition when she filed the suit in the year 2013. Omission to seek such relief is certainly due to lack of being diligent in claiming the proper reliefs. Now coming to the case on hand, as already mentioned it is matter of 2013. It is to be noted that cross-examination of P.W.-1 was concluded on 23.06.2023. As could be seen from the order sheet it is clear that evidence of Defendants was concluded on 13.02.2025. During the course of of trial although Plaintiff had opportunity to seek amendment of the relief she has not chosen to do the same. Moreover, since 27.02.2025 matter is reserved for arguments. When matter was reserved for arguments that is at the fag end of the case and Plaintiff has chosen to seek three adjournments and later on finally she came up with the present application. So it is clear that not only at the time of filing the suit but throughout the trial Plaintiff was not diligent in seeking relief . Moreover, at the fag end of the case if present application is allowed it certainly changes the nature of the suit and parties have to be directed to re litigate on the question of partition which leads to second round of litigation after 13 years. So viewed from any angle no grounds are made out to allow the application. Hence, I answer **Point No.1 in the Negative.**

8. Point No.2:- For the reasons stated above I am of the considered opinion that application filed by the Plaintiff is to be rejected by imposing cost for coming up with the present application at the fag end of the trial. In the result, the following:-:-

ORDER

The application filed by the Plaintiff
U/order 6 Rule 17 R/w Section 151 of
CPC., is hereby rejectged with cost of
Rs.1,000/-.

(Dictated to the typist directly on the computer, typed by him, the transcript revised and corrected by me, and then pronounced in the open court on this **7th Day of March 2026.**)

**(Manu Sharma S.P.)
Civil Judge and JMFC.,
Harapanahalli.**