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IN THE COURT OF CIVIL JUDGE AND JMFC., AT YADGIRI

PRESENT

**Sri. Arun Chougule,
B.A.LL.B.[Hons.]**

Civil Judge and J.M.F.C,

Dated this the 08th day of April-2025

ORIGINAL SUIT NO.28/2011

<u>PLAINTIFF/S:-</u>	Pramila D/o Shivaramsingh Tiwari, aged about: 40 years, Occ: Agriculturist & household, R/o: Gadi Mohall, Gurumitkal Tq: & Dist: Yadgiri.
	(By Sri. Y.V.V Advocate)
	-V/S-
<u>DEFENDANT/S:-</u>	Lachiram S/o Shivaramsingh Tiwari, aged about: 42 years, Occ: Agriculturist & household, R/o: Gadi Mohall, Gurumitkal Tq: & Dist: Yadgiri.
	(By Sri.N.R.K Advocate)

IN I.A.No.8

<u>Applicants/ plaintiff/s :</u>	Pramila D/o Shivaramsingh Tiwari,
	-V/S-
<u>Opponents/ defendants :</u>	Lachiram S/o Shivaramsingh Tiwari.

i.	<i>Provision under which the application is filed</i>	Order 6 Rule 17 Of CPC.
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ii.	<i>Relief sought for</i>	<i>Permission to Amend the Plaint</i>
Iii	<i>The date on which the application is filed</i>	<i>20-02-2025</i>
iv.	<i>Number of the application</i>	<i>IA No.9</i>
v.	<i>The date on which the objections are filed by different opponents</i>	<i>06-03-2025</i>
vi.	<i>The date on which the orders were passed on the said application.</i>	<i>08-04-2025</i>

**ORDER ON I.A.NO.9 FILED BY THE PLAINTIFF UNDER
ORDER 6 RULE 17 OF CPC.**

The plaintiff has filed the present application under Order 6 Rule 17 of CPC seeking permission to amend the plaint.

2. The plaintiff has sworn to an affidavit in support of the application stating that, she has filed suit against the defendant seeking the relief of declaration of title and consequential relief of permanent injunction. That, the suit was decreed by this Court on 26.03.2015. The defendant being aggrieved by the same had filed appeal before Hon'ble Court of Senior Civil Judge, Yadgiri in RA No.19/2015 which came to be allowed on 03.02.2015, whereby judgment and decree passed by this Court in favour of the plaintiff was set aside. Being aggrieved by the same, the plaintiff filed RSA NO.200120/2016 before the

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Hon'ble High Court of Karnataka, Kalaburagi Bench. In the said appeal, the plaintiff being the appellant filed IA No.2 under Order 41 Rule 27 of CPC along with copies of two will deeds executed by her deceased mother and sister. The Hon'ble High Court allowed the appeal and remanded the matter to this Court with a direction to give opportunity to both parties to produce additional documents.

3. It is stated that, in the year 2016, the plaintiff came to know about execution of Will by her deceased mother and sister from her another sister Smt.Radhabai when she sought her help in the matter. The said fact was brought to the notice of Hon'ble High Court in the affidavit of the plaintiff filed in support of application seeking permission to produce additional evidence. That, the plaintiff was under the impression that the said fact was included in the previous application filed by her before this Court seeking permission to amend the plaint after remand. However, she later came to know that the said fact was not included in the previous amendment application. That, the averment as to how the plaintiff came to know about execution of Will by her deceased mother and sister is necessary in the

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present case. As such, the proposed amendment is just and necessary. Hence, the plaintiff prays to allow the application.

4. The defendant has filed objections contending that the application is not maintainable at this stage. That, there are no valid and sufficient reasons to allow the application. That, the proposed amendment, if allowed, would change entire nature of the case thereby damaging the rights of the defendant. It is contended that the suit is filed in the year 2011 and the plaintiff is claiming that in the month of February 2016 she came to know about execution of Will and amendment sought on the said basis is not permissible in law. As previous application seeking amendment filed by the plaintiff was allowed, second application seeking amendment is not maintainable. It is contended that the application is filed with an intention to drag on the matter. On these grounds, the defendant sought to dismiss the application.

5. Heard the arguments of both side.

6. After hearing the arguments and perusal of pleading and records, the following points arise for my consideration.

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1. **Whether the application deserves to allowed?**
 2. **What order?**
7. My findings on the above points are as under;

Point No.1 : In the Affirmative

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

REASONS

8. **POINT NO.1:** The plaintiff has filed the present suit seeking the relief of declaration of title and permanent injunction restraining the defendant from dispossessing her from the suit lands.

9. The case of the plaintiff is that herself and the defendant are brother and sister and they are members of Hindu divided family. That, all the family properties were divided in a family oral partition held on the day of Ugadi in the year 1982 and thereafter, the terms of partition were reduced in the writing in form of a memorandum of partition on 03.05.1993. Since the date of partition, the plaintiff and the defendant are in lawful possession and enjoyment of the properties fallen to their respective shares. That, the suit schedule properties and non-suit schedule residential house

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were fallen to the joint share of the plaintiff, her deceased mother Amruthabai and her deceased sister Jugunabai. After the partition, the suit lands except suit item No.6 were mutated in the name of plaintiff's mother. Thereafter, the plaintiff's sister died on 19.09.2003 and her mother died on 03.11.2008. After the death of her mother and sister, the plaintiff having become the absolute owner is in possession and enjoyment of the suit land. It is alleged that the defendant having no manner of right, title or interest over the suit properties is denying the plaintiff's title over the suit properties and trying to dispossess her from the possession thereof. Hence, plaintiff was constrained to file the present suit.

10. The defendant having appeared through his counsel filed written statement denying the case of the plaintiff including the alleged oral partition claimed by the plaintiff. The defendant contended that his father Shivaramsingh Tiwari was the owner of the suit properties and other non-suit schedule house and shops situated at Gurumitkal Town. The father of the defendant died in the year 1977 leaving behind his widow Amruthabai, two sons by names Gopalsingh (died in the year 1985) and Lachiramasingh (defendant), and three daughters by names Radhabai, Umabai and Pramila (plaintiff). It is contended

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that, after the death of elder son Gopal Singh in the year 1985 the family met into division wherein the defendant's mother Amruthabai had voluntarily taken an open plot situated near bus stand, a shop bearing No.1-7-56, lands bearing Sy.Nos.135/A and 135/2-A along with southern ½ portion of the house for her share. That, the plaintiff is getting rent of Rs.2,000/- per month from the shop and yield from land bearing Sy.No.135/A and 135/2-A and she is residing in the southern ½ portion of the house. The plaintiff and her mother used to reside in their portion of the house and they were leading life out of the income received from the above two lands and the rent. That, the plot fallen to their share has been sold by the plaintiff and her mother. After the death of their mother, the plaintiff is residing alone and she is receiving rent and yield from the lands. However, the plaintiff has filed false suit on the instigation of her sister Radhabai's husband Premprasad with an intention to cause loss to the defendant. On these grounds, the defendant sought to dismiss the suit.

11. Having regard to pleadings of the parties, this Court framed necessary issues and recorded evidence of both parties. Thereafter, the suit was decreed by judgment dated 26.03.2015.

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Aggrieved by the same, the defendant filed appeal before Hon'ble Court of Senior Civil Judge, Yadgiri in RA No.19/2015, which came to be allowed and the decreed passed by this Court in favour of the plaintiff was set aside. Thereafter, the plaintiff filed appeal before Hon'ble High Court of Karnataka in RSA No.200120/2016 and filed an interim application before the Hon'ble High Court under Order 41 Rule 27 of CPC seeking permission to produce the will deeds said to have been executed by her deceased mother and sister bequeathing their shares in the suit properties and non-schedule properties in her favour. The Hon'ble High Court allowed the appeal by judgment dated 15.09.2021 and remanded the matter to this Court with a direction to receive additional documents and provide opportunities to the parties to adduce evidence on the additional documents and to hear the matter and pass judgment in accordance with law. As per judgment of Hon'ble High Court, the matter was restored by this Court to its original number. Thereafter, plaintiff filed IA No.8 U/o 6 Rule 17 of CPC seeking permission to amend the plaint to incorporate pleadings regarding execution of Will by her deceased mother and sister and additional relief of declaration based on Will. The said application, after contest, was partly allowed by this Court by

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an order dated 05.12.2024. Thereafter, the defendant filed additional written statement and this Court has framed additional issues. When the matter was posted for further evidence of the plaintiff on additional issues, she filed the present application seeking permission to amend the plaint. The proposed amendment sought by the plaintiff is as under:

“4(C) when the RSA was pending on the file of Hon’ble High Court of Karnataka, Kalaburagi bench, plaintiff met her another sister Smt.Radhabai in the month of February 2016 for help concerning this litigation, she told the plaintiff that their deceased mother and sister have executed registered “WILLS” at Muddebihal. But she has not given exact particulars of those “WILLS”. Thereafter the plaintiff enquired the sub-registrar Muddebihal in this regard she found the details of the “WILLS” and then get the certified copies of the same and were produced before Hon’ble High Court in pending litigation”.

12. As already noted above, the plaintiff has already got incorporated pleadings regarding execution of Will by her deceased mother and sister and additional relief of declaration on the basis of Will. By way of proposed amendment sought under the present application, the plaintiff is seeking to incorporate the pleadings as to how and when she came to know about execution of Will by her deceased mother and sister. As the proposed amendment is in the nature of

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furnishing an explanation to the facts already stated in the plaint, this Court is of the opinion that, the proposed amendment, if allowed, would neither change the nature of the suit nor cause any injustice to the other side. It is no doubt true that the plaintiff had the opportunity of including the averments of proposed amendment in the previous application filed by her and delay is caused by filing similar applications. However, the same cannot be a ground to reject the application as the delay can be compensated by imposing terms as to payment of costs. Hence, the application deserves to be allowed. Accordingly, point No.1 is answered in the Affirmative.

13. **POINT NO.2:** In view of the above discussion, the following;

ORDER

IA.No.9 filed by the plaintiff under Order 6 Rule 17 of CPC is hereby allowed on cost of Rs.2,000/- payable to defendant by the plaintiff, and the plaintiff is permitted to amend the plaint.

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The plaintiff is directed to amend the
plaint and to furnish amended plaint on or
before the next date.

No order as to costs.

Call on: 17.04.2025.

(Dictated to the stenographer, transcribed by him, transcript corrected by
me and then pronounced on this the **08th day of April, 2025.**)

(ARUN CHOUGULE)
CIVIL JUDGE & JMFC,
YADGIRI.