

**IN THE COURT OF II nd ADDL.DISTRICT AND  
SESSIONS COURT, YADGIR,  
SITTING AT SHORAPUR.**

**:PRESENT:**

**Sri. Yamanappa Bammanagi, B.A.LL.B (Spl.)  
II nd Addl. District & Sessions Judge, Yadgir,  
sitting at Shorapur.**

**DATED THIS THE 05<sup>TH</sup> DAY OF NOVEMBER 2025.**

**R.A. NO.5037/2025  
(Old R.A. NO.25/2024)**

**Appellants/  
Defendants:**

01. Ashappa S/o Late. Mallappa & Ors

**//Versus//**

**Plaintiff/  
Respondent:**

01. Smt. Laxmibai W/o Nagappa Badiger  
& Ors.

**Appellants/Applicants:**

01.Ashappa S/o Late. Mallappa & Ors

**//Versus//**

**Plaintiff/Opponents:**

01. Smt. Laxmibai W/o Nagappa Badiger & Ors.

**COMMON ORDERS ON IA No. I to III/2025**

Being aggrieved by the judgment and decree,  
dated 01.04.2024, passed by the Ld Senior Civil Judge  
and JMFC, Shorapur, in O.S.No. 29/2022, the

defendants have prepared this appeal challenging the correctness and legality of the same on various grounds, when appeal was posted for arguments the Ld counsel for the appellant has filed these three IAs, which as follows:

**1. IA No. I is U/s 151 of CPC, seeking permission to amend the written statement.**

**02. IA No. II is U/o 6 R. 17 R/w 151 of CPC for amendment of written statement.**

**03.IA No. III is U/o 41 R. 27 of CPC, seeking permission to lead additional evidence.**

**2.** In support of each IA, the appellant No. 1 has filed his affidavit stating that he was suffering from Paralysis stroke, on account of which he was not able to speak properly, and not able to walk properly, and he was not able to recollect the facts immediately, hence, he did not take defence in the written statement before the trial court that, the plaintiffs/respondent herein have no share in the suit property, suit is barred by limitation as the plaintiffs filed suit for Partition and Separate Possession after 38 years of demise of the father of the plaintiffs, even after taking such defense in

the written statement the trial court wrongly comes to conclusion and decreed the suit in OS No. 29/2022, further he contended in the affidavit that he has collected revenue records from 1956 till date and found that, Sy. No. 88/1, measuring 19A., 20Gts., and Sy. No. 88/2, measuring 01A., 29 Gts., were belongs Govt. of Karnataka, the state Government has granted the land bearing Sy. No. 88/1, measuring 19A., 20 Gts., to his father, land bearing Sy. No. 88/2 was granted to him, on verification of grant order, it is clear that, Sy. No. 88/2 was granted in his favour, in view of the said documents, said properties are self acquired of appellant/defendant No. 1 and Sy. No. 88/2 is not liable for partition and the plaintiffs are not entitle any share in the suit schedule property as they are ousted from the property and Sy. No. 88/2 is self acquired property of the defendant No. 1/appellant as it could be seen from the documents produced along with IA filed U/o VI R. 17 of CPC, in view of the documents available now, the proposed amendment is necessary for just adjudication of the issues involved in the suit and in

support of proposed amendment the additional evidence is required to prove the facts proposed to be amended. The proposed amendment sought in the IA filed U/o VI R. 17 of CPC reads thus;

*01. To be added after para No. 7-A of written statement the following contents;*

*Add: It is submitted that, Sy. No. 88/2 measuring 01A., 29 Gts., of land was granted to defendant No. 1 by way of Hakku Patra, dated 30.05.1981. It is further submitted that, pursuant to the grant order dated 30.05.1981, revenue records were changed in favour of defendant No. 1 till date the revenue records are standing in his favour. Hence, the Sy. No. 88/2 is absolute and self acquired property of defendant No. 1 and not amenable to partition.*

*02. To be added after the para No. 7-B of written statement the following contents;*

*It is submitted that, after death of Late. Mallanna in the year 1988, Sy. No. 88/1 has been mutated in the name of Yankamma and Shridhar in the year 1988-89, Sy. No. 22/2 was mutated in the name of Defendant No. 1, Sy. No. 286/1 and 286/2A was mutated in the name of Ashappa i.e., defendant No. 1. Hence, the plaintiffs have been ousted from the family properties way back in the year 1988-89. Hence, on this ground alone, suit is liable to be dismissed.*

*03. To be added after the para No. 7-C of written statement the following contents;*

*It is submitted that, the house bearing No. 10-1-11/1 new, 10-1-6/1 old situated at Medargalli of Shorapur has been constructed by the defendant No. 1 after his retirement i.e., in the year 2014 and by the aid and help retirement benefits, the aforesaid has been constructed. The copies of the permission letter, Mutation copy, Khatha and Pension papers are produced herewith along with this application. Hence, the House property is self acquired property of the defendant No. 1.*

**3.** The appellant No. 1 has filed his affidavit in support of each IAs contending same grounds and facts, and produced additional documents which are proposed to be get marked if amendment is allowed, the said documents are as follows;

A. The copy of Hakkupatra, dated 30.05.1981.

B. The copies of RTC extracts from 1956 to till date.

**4.** With these grounds and documents the defendants sought for amendment of written statement and sought permission to lead additional evidence to prove the facts to be incorporated in written statement by way of proposed amendment.

5. On the other hand, the Ld. counsel for the respondents/plaintiffs filed objection to the said IAs stating that, the appellant/defendant No. 1 filed his written statement before the trial court and he did not urged proposed amendment though, he was having sufficient opportunities to take the defense of proposed amendment in the written statement, nothing was prevented the defendant/appellant No., 1 to take proposed amendment before the trial court, at the appellate stage the amendment to the written statement is not permissible and IAs filed by the appellants are not maintainable, if proposed amendment is allowed, the nature of the suit will change, the trial court while passing the Judgment and Decree under challenging this appeal was considered all the facts and material placed before it, the plaintiffs/respondents are joint family members and they are entitle for their legitimate share in the suit properties, the Judgment and Decree of trial court is in accordance with the law and facts, if proposed amendment is allowed, it will change the

nature of the suit and it will lead multiple of the proceedings with these facts and reasons the respondents prayed for rejection of the IA Nos. I to III.

**6.** Heard on both side, in support of his argument, the Ld. Counsel for appellant/defendant No. 1 relied on the decisions which are as follows;

*01. (2008) 8 Supreme Court Cases 511 between North eastern Railway, Administration Gorakhpur V/s Bhagwan Das (Dead) by Lrs.*

*02. (2001) 8 SCC 97 (para 5)*

*03. (2006) 6 SCC 498 Para 13 to 16.*

**7.** On the other hand, in support of his argument, the Ld counsel for the respondent relied on the decision reported in **(2015) 4 KCCR 3312 Karnataka High Court, (Dharwad Bench) between Mugutsab and Other V/s Khansab** in WP No. 110126 of 2024 (GM-CPC) dated 02.01.2015.

**8.** I have gone through the pleadings of both parties, proposed amendments, and considered the grounds stated in the affidavit filed in support of IAs and consider objections filed by the respondents,

considered arguments of the Ld counsels of the parties, and material placed before the court, on perusal of the same the points that would arise for my consideration are as follows;

**Point No.1:** Whether the proposed amendment of written statement is necessary for the adjudication of issued involved in the suit?

**Point No.2:** Whether the defendants/appellants are entitled for amendment of written statement after admitting the facts in the written statement which is proposed to be in corporate in written statement by way of amendment ?

**Point No. 3:** What order?

**9.** My answer to the above points are as follows;

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

Point No. 2: **In the Negative**

Point No. 3: **As per the final order for the following;**

## **REASONS**

**10.** Point No. 1 & 2: These points are interconnected to each other, in order to avoid the repetition of facts, I took these points for common discussion. Before touching the merits of the IAs I would like to note here the brief facts of the plaintiffs taken in the plaint and brief facts contended in the written statement of appellant/defendant No. 1.

**11.** Brief facts of the plaintiffs' is that, Plaintiff No. 1 & 2 are the sisters of defendant No. 1, the defendant No. 2 is wife of the defendant No. 1, the defendant No. 3 to 6 are the children of the defendant No. 1 & 2 and they are Hindu undivided joint family members and suit properties are the ancestral and joint family properties of the plaintiffs and the defendants, during life time of the defendant No. 1, the plaintiffs used to receive their share in the yield of the suit properties, after death of the defendant No. 1, the defendant No. 2 to 6 stopped to give share of the plaintiffs' yield and the defendants

colluding each other got mutated their names in the revenue records of the suit properties, hence the plaintiffs have got their legitimate share in the suit properties.

**12.** On the other hand, the defendants appeared through counsel and filed written statement and denied plaintiff averments as false and taken defense that, the plaintiffs have got married about 35 years back during the life time of father of the defendant No. 1, the father of the plaintiffs and defendant No. 1 died on 20.06.1988, after his death there was no relation between plaintiffs and defendants, hence, plaintiffs have no share in the suit properties. On the basis of pleadings of the parties the trial court has framed the following issues:

### **ISSUES**

*01. Whether the plaintiffs prove that, the suit schedule properties are ancestral and joint family properties of plaintiffs and defendants?*

*02. Whether plaintiffs are entitled share in the suit properties?*

03. *What order or decree?*

**13.** After considering the oral and documentary evidence the trial court decreed the suit and allotted 1/3<sup>rd</sup> share to each plaintiffs, the defendant Nos. 2 to 6 are together allotted 1/3<sup>rd</sup> share in the suit properties, being aggrieved by the same the defendants have challenged the said Judgment and Decree, when appeal was posted for argument, the appellants/defendants have filed the present IAs for amendment of written statement and for additional evidence.

**14.** In order to appreciate the grounds stated in the affidavit of appellant, filed in support of IAs for proposed amendment, I would like to note here the facts stated in the plaint and same is not disputed by the defendants in their statement. I would like to extract plaint para No. 1 to 3 which reads thus;

*01. That the address of the plaintiffs for the purpose of suit summons, notices, etc., is that of their counsel Shri. Ramanad Kavali, Advocate, Shorapur. The address of the defendants for the same purpose is as mentioned in the cause title.*

02. That the description of properties are lands 1) Sy. No. 88/1. It is renumbered 88 Phodi-1, adm, 20A., 00 Gt., with LR of Rs. 23-89. 2) Sy. No. 22/2 renumbered 22 Phodi-1, adm 02A., 14 Gts., with LR of Rs. 3-28. 3) Sy. No. 286/1A and 286/2A merged in Sy. No. 286, adm 00A., 28 Gts., with LR of Rs. 1-00 ps. 4) Sy. No. 286/2A, adm 00-36 Gts, 5) Sy. No. 88/Phodi-2, adm 01A., 29Gts., all situated at village Kaldevanhalli, Tq: Shorapur, Dist: Yadgir and House Municipal No. 10-1-11/1 fresh, 10-1-6/1 old is situated at Medargalli, Shorapur, Dist: Yadgiri (Herein after called as suit properties).

03. That the plaintiffs and defendant No. 1 are the real brother and sisters in relation and the defendant No. 2 is the wife of defendant No. 1 and the defendants No. 3 to 6 are sons of defendant No. 1 & 2 in relation, and the suit lands are ancestral properties of plaintiffs and defendant No. 1. The family pedigree is drawn as under for clear understanding the Hon'ble court except the plaintiffs and defendant No. 1, no any other successors have left behind.

**15.** Further, I would like to extract para No.2 and 3 of written statement of defendant No. 1, which reads thus;

2. That, the contents of para No. 1 of the plaint pertains to the address of the parties needs no reply.

3. *That, the contents of para Nos. 2 & 3 are no reply.*

16. This court extracted the brief facts of the plaintiffs' case and brief facts of the facts stated in the written statement of defendant No. 1 are extracted only for the purpose of ascertaining as to whether after admitting the facts stated in the plaint the defendant is entitled for amendment his written statement by taking deferent stand against their own facts pleaded in the written statement.

17. off-course it is well settled law that, the basic test of refusal and allowing in the amendment of pleading is whether such amendment is necessary for the determination of real question in controversy or for proper and effective adjudication of the case, it is also well settled law that at the time of deciding the IA for amendment of pleadings court has to considered potentiality of prejudice or injustice which is likely to be caused to the other side by amendment, and the amendment should not cause such a prejudice that the other side can not be compensated adequately in terms

of money, further it is well settled law that, amendment of pleading can be allowed at any stage, but, if the amendment is sought after commencement of trial they party has to show that, in spite of due diligions the amendment could not have been sought earlier, because the purpose of amendment of pleading is to minimize the litigation and the proposed amendment is necessary for determination of controversy between the parties. Keeping in mind the settle possession of law I answer point No.1 and 2.

**18.** On careful scrutiny of facts stated in the plaint and written statement extracted supra, it is clear that, the relationship between the parties and nature of suit properties not disputed by the both the parties. When the defendant admitted in his written statement at para Nos. 2 & 3 extracted supra that, he has no reply to the facts stated in the plaint at para No. 2 & 3. The facts stated in para No. 2 & 3 of the plaint is not disputed by defendant No.1, thus when the defendant No.1 did not disputed the facts stated in para No.2 and 3 of the defendant he can not be allowed to take away

the rights of the plaintiffs accrued to the plaintiff on admission in the pleadings. When rights accrued to the parties over suit schedule properties on basis of pleading of the parties, it is well settled law that, his right cannot be taken away by way of amendment of written statement. Under these circumstances the defendants/appellants cannot be allowed to take away the rights of plaintiffs by way of amendment of written statement that defeats a valuable accrued and vested legal rights of the plaintiffs, because the relationship of the plaintiffs with defendants is not in dispute and a clear and unequivocal admission of facts in the written statement that confers right on the plaintiffs.

**19.** The proposed amendment is Sy.No.88/2 measuring 01 acres 29 guntas is self acquired property of the defendant No.1 as Govt. as granted the said land to the defendant No.1 and produced Hakku Patra, and xerox copy of grant order and remaining Sy. Numbers are mutated in the name of defendant No.1 after death of his father Mallanna, 3<sup>rd</sup> part of amendment is house property, house property is his self acquired property as

defendant No.1 has purchase the house property from his retirement benefits, for these proposed amendment the defendant already taken defence at para No.4 of written statement that, the defendant No.1 denied the facts that, plaintiffs and defendants are not Hindu Undivided Joint Family members, hence plaintiffs have not rights in the suit schedule properties, and the plaintiffs have already taken their share in the suit schedule properties, this defence is sufficient to cover the propose amendment. That apart, the defendant No.1 contended that, he was not able to recollect the facts due to ill-health as contended in his affidavit filed in support of IA, if the defendant did not file his written statement due to said ill-health then appreciation would be different, but, the defendant has filed his entire written statement covering all facts then what prevent the propose amendment to incorporated with written statement, thus, the grounds stated in the affidavit is not genvien grounds

**20.** It is well settled law that, the amendment pleadings should be allowed when proposed amendment

does not cause prejudice to the other side which cannot be compensated in terms of money. It is also well settled law that, the amendments of the pleadings shall liberally allowed if the proposed amendment is before commencement of trial, if proposed amendment is after commencement of trial then strick scrutiny is to be made about due diligion of facts proposed to be amendment and whether the proposed amendment is necessary for the adjudication of issue involved in the suit or if allowed whether it prejudice to the other side. In the case on hand the proposed amendment is not necessary for adjudication of issue involved in the suit. Further, if proposed amendment is allowed, the very rights of the plaintiffs accrued on basis of pleadings will be affected, proposed amendment is not permissible under law, looking to the facts and circumstances of the case and proposed amendment the defendants/appellants are not entitled to have shelter under the law laid down in the decisions relied on by the Ld counsel for the appellants/defendants. Under the fact and circumstances of the case and issue

involved in the suit I am of the opinion that, the proposed amendment is only with an intention to take away the legal rights of the plaintiffs over the suit schedule properties which is not permissible under the law, hence the IAs filed by the appellant has no merits and liable to be dismissed. Hence, I answer point Nos. 1 & 2 in the **Negative**.

**21. POINT No.3:** In view of the discussion made on point No.1 & 2, I proceed to pass the following;

### **ORDER**

IA No. I to III filed by the appellant  
are hereby dismissed.

No order as to cost.

(Dictated to the Stenographer-III directly on computer, transcript computerized by her, corrected, initialed and then pronounced by me in the open court, on this the 05<sup>th</sup> day of November – 2025)

**(YAMANAPPA BAMMANAGI)**  
**II Addl.District& Sessions Judge**  
**Yadgir, Sitting at Shorapur.**