



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 26TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE ASHOK S. KINAGI

WRIT PETITION NO.102218 OF 2023 (GM-CPC)

BETWEEN:

VIJAYKUMAR S/O. HANUMANTHAPPA POOJARI,
AGE. 53 YEARS,
OCC. ASSISTANCE EXECUTIVE ENGINEER,
ZILLA PANCHAYATH ENGINEERING,
SUB-DIVISION, GANGAVATHI,
R/O. 1ST MAIN, 3RD CROSS,
JAYANAGAR, GANGAVATHI-583277.

...PETITIONER

(BY SRI. HARSH DESAI, ADVOCATE)

AND:

RAJU S/O. HANUMANTHAPPA POOJARI,
AGE. 62 YEARS, OCC. RETD. MECHANIC KSRTC,
R/O. KAMPLI SUGAR FACTORY, KAMPLI-583132,
TQ. HOSAPETE, DIST. VIJAYANAGARA.

...RESPONDENT

(NOTICE TO SOLE RESPONDENT IS SERVED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRYING TO ISSUE A WRIT OF CERTIORARI QUASHING THE IMPUGNED ORDER PASSED BY LEARNED ADDITIONAL SENIOR CIVIL JUDGE AND JMFC AT HOSAPETE IN O.S. NO.49/2017 ON I.A. NO.III DATED 16-03-2023 VIDE ANNEXURE-E AND THEREBY DISMISS THE APPLICATION AND ETC.,.

VIJAYALAKSHMI
M KANKUPPI



Digitally signed by
VIJAYALAKSHMI
M KANKUPPI

Date: 2026.04.09
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THIS WRIT PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE ASHOK S. KINAGI)

1. The petitioner has filed this petition challenging the order dated 16.03.2023 passed on I.A. No.III in O.S. No.49/2017 by the learned Additional Senior Civil Judge and JMFC, Hosapete.

2. Brief facts, leading rise to the filing of the writ petition are as follows:

The petitioner filed a suit for partition and separate possession in O.S. No.49/2017. The respondent filed his written statement, and the trial Court framed issues. The case was posted for evidence of PW-1.

3. At that stage, the respondent filed an application in I.A. No.III seeking amendment of the written statement. The said application was opposed by the petitioner by filing his objections. The trial Court, after hearing the learned



counsel for the parties, allowed the application vide order dated 16.03.2023 (Annexure-E). Aggrieved by the said order, the petitioner has filed this writ petition.

4. A Notice was issued to the respondent. Despite the service of notice, the respondent remained unrepresented.

5. Heard the arguments of the learned counsel for the petitioner.

6. Learned counsel for the petitioner submits that the application was filed after commencement of the trial. He submits that, as per the proviso to Order VI Rule 17 of the Code of Civil Procedure, such an application cannot be entertained unless the party establishes that, despite due diligence, the matter could not have been raised earlier. It is submitted that the respondent has not shown any such reason/due diligence. Hence, the impugned order is arbitrary and erroneous, and the writ petition deserves to be allowed. Accordingly, on these grounds prays to allow the writ petition.



7. Perused the records, and considered the submissions of the learned counsel for the petitioner.

8. It is an undisputed fact that the petitioner filed the suit for partition and separate possession, in O.S No.49/2017 and the respondent filed the written statement. After framing of issues, the matter was posted for cross-examination of PW-1. At that stage, the respondent filed an application in I.A No.III seeking amendment of the written statement.

9. It is stated that earlier the suit was decreed on 12.10.2018. Thereafter, the respondent preferred an appeal in R.A. No. 5001/2019. The Appellate Court allowed the appeal, set aside the judgment and decree, and remanded the matter for fresh consideration.

10. By way of the proposed amendment, the respondent has sought to plead that he had contributed towards the purchase of the suit schedule property and also raised a plea regarding tenancy. It is contended that, due to oversight, these pleadings were not taken earlier.



11. The petitioner opposed the application on the ground that it was filed after commencement of the trial and is not maintainable.

12. On perusal of the proposed amendment, it is seen that the same is in the nature of an elaboration/explanation of the existing defence. The proposed amendment do not change the nature of the case or the defence, nor does it withdraw any earlier admissions. The respondent has also stated that, despite due diligence, the relevant facts could not be pleaded earlier.

13. The trial Court, after considering the entire material on record, has rightly exercised its discretion in allowing the said application. Hence, I do not find any error or illegality in the impugned order warranting any interference.

14. Accordingly, the following:



ORDER

- i. The writ petition is ***dismissed***.
- ii. Pending application if any shall stand disposed of.

**Sd/-
(ASHOK S. KINAGI)
JUDGE**

AC
CT: UMD
List No.: 1 Sl No.: 49