



NC: 2024:KHC-D:14109  
WP No. 102120 of 2023  
C/W WP 102243/2023

**IN THE HIGH COURT OF KARNATAKA,  
DHARWAD BENCH  
DATED THIS THE 27<sup>TH</sup> DAY OF SEPTEMBER, 2024  
BEFORE  
THE HON'BLE MR. JUSTICE H.P.SANDESH  
WRIT PETITION NO.102120 OF 2023 (GM-CPC)  
C/W  
WRIT PETITION NO.102243 OF 2023 (GM-CPC)**

**IN WP NO.102120 OF 2023**  
**BETWEEN:**

SHRIKANT BASAPPA KURI  
AGE. 39 YEARS, OCC. LEGAL PRACTITIONER,  
R/O. NAREGAL-582119, TQ. RON,  
DIST. GADAG.

...PETITIONER

(BY SMT. KAVYA C. SHETTAR, ADVOCATE)

**AND:**

1. RATNAWA D/O. LAXMAPPA KURI  
AGE. 43 YEARS, OCC. HOME MAKER,  
R/O. NAREGAL-582119, TQ. RON,  
DIST. GADAG.
2. LAXMAPPA S/O. HANAMAPPA KURI  
SINCE DEAD BY HIS LR's.,  
RESPONDENTS NO.1, 3 AND 4.
3. BALAWA W/O. HANAMAPPA KURI  
AGE. 63 YEARS, OCC. HOME MAKER,  
R/O. NAREGAL-582119, TQ. RON,  
DIST. GADAG.
4. SHANTAWA W/O. NINGAPPA KURI  
AGE. 48 YEARS, OCC. HOME MAKER,  
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5. MUDAKAMMA W/O. BASAPPA KURI  
AGE. 70 YEARS, OCC. HOME MAKER,  
R/O. NAREGAL-582119, TQ. RON,  
DIST. GADAG.
6. NINGAPPA S/O. BASAPPA KURI  
AGE. 48 YEARS, OCC. AGRICULTURE,  
R/O. NAREGAL-582119, TQ. RON,  
DIST. GADAG.
7. HANAMAPPA S/O. BASAPPA KURI  
AGE. 70 YEARS, OCC. AGRICULTURE,  
R/O. NAREGAL-582119, TQ. RON,  
DIST. GADAG.
8. NINGAMMA @ MEENAXI W/O. MALLAPPA METI  
AGE. 41 YEARS, OCC. HOME MAKER,  
R/O. HOSALLI-582 209, TQ. RON,  
DIST. GADAG.
9. YALLAPPA S/O. BASAPPA KURI  
AGE. 37 YEARS, OCC. AGRICULTURE,  
R/O. NAREGAL-582119, TQ. RON,  
DIST. GADAG.

...RESPONDENTS

(BY SRI. HANUMANTHAREDDY, ADVOCATE FOR R1, R3 AND R4;  
NOTICE TO R5 TO R9 ARE DISPENSED WITH;  
R1, R3 AND R4 ARE TREATED AS LR's OF DECEASED R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227  
OF THE CONSTITUTION OF INDIA, PRYING THIS HON'BLE COURT TO  
ISSUE A WRIT OF CERTIORARI QUASHING THE IMPUGNED ORDER  
PASSED BY ADDITIONAL DISTRICT AND SESSIONS JUDGE COURT AT  
GADAG IN R.A. NO. 56/2010 DATED 03.02.2023 ON APPLICATION  
FILED BY PETITIONER IN I.A. NO. VIII FILED U/O. VI RULE 17 R/W.  
SEC. 151 OF CPC VIDE ANNEXURE-D AND THEREBY ALLOW THE  
SAID APPLICATION.



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...PETITIONER

(BY SRI. C.S.SHETTAR AND SMT. KAVYA C. SHETTAR, ADVOCATES)

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GADAG IN R.A. NO. 57/2010 DATED 03.02.2023 ON APPLICATION  
FILED BY PETITIONER IN I.A. NO. VIII FILED U/O. VI RULE 17 R/W.  
SEC. 151 OF CPC VIDE ANNEXURE-D AND THEREBY ALLOW THE  
SAID APPLICATION.

THESE PETITIONS, COMING ON FOR PRELIMINARY HEARING,  
THIS DAY, ORDER WAS MADE THEREIN AS UNDER:



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**ORAL ORDER**

(PER: THE HON'BLE MR. JUSTICE H.P.SANDESH)

1. Heard the petitioner's counsel and the counsel appearing for the respondents.

2. These two writ petitions are filed being aggrieved by the order passed by the Trial Court in rejecting the Order VI Rule 17 R/w Section 151 of CPC for amendment of plaint filed before the First Appellate Court. Hence, taken up both the matters together. The prayers sought in both these Regular Appeals are one and the same since one suit is filed by the respondent and another suit is filed by the petitioner herein. The suit filed by the respondent is for the amendment of written statement and suit filed by the petitioner is for the relief of declaration and injunction. The other petition in first matter amendment of written statement and in second matter amendment of plaintiff but same factual aspects for amendment. The First Appellate Court, while rejecting both the applications for amendment of plaint and amendment of written statement, having considered the pleading sought for both the plaints and the written statement. Taken note of amendment intended to be made to his written statement is in the form of



insertion of paragraph No.6 and so also insertion of the averments made in the plaint and comes to the conclusion that after the trial, amendment cannot be allowed 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 the trial.

3. The First Appellate Court also taken note of that earlier appeals are disposed of and same has been challenged before this Court and also taken note of the scope of the appeal in view of the remand made by the First Appellate Court and also the reason that petitioner who is appellant in this case only wanted to produce certified copy of the compromise decree which had been engrossed on stamp paper and also taken note of the fact that certified copy of the compromise petition on the basis of which compromise had been drawn was already on record and also the production of RTCs' and mutations would also be relevant for the parties for determining the issues in the suit between the parties. So also taken note of the reasons recorded by the First Appellate Court when the I.A. was filed under Order 41, Rule 28 of CPC to get the documents intended to produce by the appellant into record by adducing the



admissibility of those documents and to pass judgment accordingly.

4. The First Appellate Court also taken note of the fact that relief is sought for partition of 1/4<sup>th</sup> share in the suit schedule property. The proposed defendant is intending to introduce the fact that defendants have no right title and interest of whatsoever in the suit properties and also taken note of the fact that producing the documents which he already produced along with the list and also considering not exercise the due diligence for introducing the amendment for a period of 21 years.

5. The principles laid on the judgment referred in the case of ***United India Insurance Company limited Vs. Ganga Singh and Another*** reported in ***2018(1) KCCR 439*** wherein an observation is made that the respondent has not given proper explanation for not preferring amendment at earlier stage and comes to the conclusion that in a belated stage, the application is filed.

6. The counsel appearing to the petitioner would vehemently contend that even if any delay in filing the application, the Court can allow the amendment in the appeal



and also in support of the argument relied upon the judgment of Hon'ble Supreme Court in the case of ***Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and Another*** reported in **(2022) 16 SCC** and brought to notice of this Court in paragraph No.71, wherein an observation is made that a prayer for amendment is generally required to be allowed unless: the same is 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. The amendment changes the nature of the suit. The prayer for amendment is *mala fide*. The other side loses a valid defense in dealing with a prayer for amendment of pleading, the Court should avoid a hypertechnical approach, and is ordinarily required to be liberal, especially where the opposite party can be compensated by costs.

7. The counsel also brought a notice of this Court with regard to the delay is concerned. 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.





8. The counsel referring the judgment of **Sanjeev Builders Pvt. Ltd. (Supra)** would vehemently contend that the amendments sought in both the appeals is with regard to that there was already a partition in respect of the ancestral property in the year 1943 and in view of the said partition, even M.E. was also affected in the year 1995 and property which was allotted to the share of Ningappa got divided upon his two brothers and they are nearest heirs being class-II entry No.2 and they could succeed on Section 8 of Hindu Succession Act, 1956. Those properties inherited by the Laxmappa were the self acquired properties. Hence, challenging the partition made between Laxmappa Hanamappa Kuri and the defendant No.4 cannot be questioned legally by the daughters of Laxmappa Hanamappa Kuri. The said pleading was sought to be amended and in support of the application an affidavit sworn to and reiterated the same in paragraph No.3. The Trial Court not considered the same and committed an error in coming to the conclusion that no such reasons are assigned.

9. *Per contra*, the counsel appearing to the respondents would vehemently contend that suit is of the year 2004 and the same was decreed. Against that the judgment



and decree passed in favour of the plaintiff of the suit of the respondents granted decree for the relief of partition and separate possession and suit filed by the petitioner for declaration and the injunction was dismissed.

10. The First Appellate Court also considered both the appeals and those orders are also have been challenged before this Court in RSA and the matter has been remanded to the Trial Court in view of non consideration of application filed under Order 41 Rule 27.

11. The counsel also vehemently contend that Trial Court also given the reasoning that amendment is sought after 21 years of the litigation and that too contending that they recently came to know about the earlier partition and not made any efforts before the Trial Court filing any such application and also the Trial Court taken note of matter was remanded to the First Appellate Court when an application was filed under Article 41, Rule 27 was not considered. Only with an intention to protract the proceedings, even though suit is of the year 2004, such applications are filed and Trial Court also while rejecting the application assigned the reasons that if any explanation is



not given with regard to the amendment is sought belatedly, the same cannot be allowed.

12. The counsel also would submit that the petitioner is an advocate and misusing his profession by dragging the matter for several years and one or the other reason, filing the petitions before the Court and earlier also writ petition was filed in W.P.No.104413/2022 and the same was also allowed and the same is in respect of production of additional documents was required to be allowed and coming in the way of disposal of the regular appeal, though the appeals are of the year 2010.

13. The counsel also brought the notice of this Court that data is also received from the First Appellate Court that matter is pending from last 14 years before the First Appellate Court.

14. Having heard the petitioner's counsel and also the counsel appearing for the respondents and this Court has to take note of amendment is sought. The amendment application is filed for the amendment of written statement as well as the amendment of plaint and same pleading was sought to be amended, that too these applications were filed on 09.12.2022.



15. Admittedly suit is of the year 2004 and it is also not in dispute. The appeals are also filed before the First Appellate Court in 2010 and also not in dispute that appeals are pending from last 14 years and also it is important to note that amendment is sought after remanding the matter by this Court and the remand is also in respect of production of documents by invoking Order 41 Rule 27 of CPC.

16. It is also important to note that the averments sought to be amended both in the plaint as well as in the written statement is with regard to disclosing the fact of earlier partition in respect of R.S.No.106/2A+2B measuring 7 acres 23 guntas which was bearing R.S.No.106/2 along with the land bearing R.S.No.463/6 measuring 2 guntas along with some other properties claiming that the same were allotted to the share of youngest son of propositus Ningappa S/o Laxmappa Kuri and so also with regard to the document came into existence of M.E.No.9877 of Naregal village and the fact that already an application is filed under Article 41, Rule 27 of CPC for seeking the permission of the Court to produce the additional documents also not in dispute. This Court allowed the writ petition permitting to produce the documents.



17. When such being the case, when the document already sought to be placed before the Court, particularly with regard to the amendment sought by the petitioner and the same is also filed delayed after 21 years of institution of the original suit for the relief of partition and separate position.

18. Another suit is filed by the petitioner for the relief of declaration and injunction and no doubt delay could be explained but no such delay is explained by the petitioner for a longer period. No doubt the First Appellate Court also in the judgment referred by the petitioner comes to the conclusion that delay in applying for amendment alone is not a ground to disallow the prayer. The prayer for amendment would be allowed and the issue of limitation framed separately for decision and not the question of limitation in the case on hand. The amendment is sought during the appellate stage and no doubt it is also settled law that amendment could be allowed even in appellate stage also and the amendment sought must be for the purpose of deciding the issue involved between the parties and in the case on hand, the application is filed after 21 years that too only insert the amendment of earlier partition of



the year 1943 and subsequent to an entry is made in M.E. number.

19. When such being the case, I do not find any error committed by the Trial Court in rejecting the application filed after belated stage that too in the appellate stage and already an application is filed under Article 41 Rule 27 is also pending before the Appellate Court for adjudication of the issues involved between the parties.

20. Under such circumstances, petitioner has not made out any ground to amend the plaint as well as written statement. Hence, not a case for allow the rejection of application for amendment under Order 6 Rule 17 sought for amendment of written statement and also the amendment of plaint and no ground is made out to quash the order passed by the Trial Court.

21. In view of discussions made above, I pass the following

ORDER

- i) Both writ petitions are dismissed.



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- ii) The First Appellate Court is directed to dispose of the matter within a period of four months from today since the suit of the year 2004, and also the appeal of the year 2010.
- iii) Both the counsels and also the parties are directed to assist the First Appellate Court in disposal of the same within a time stipulated period.

**Sd/-**  
**(H.P.SANDESH)**  
**JUDGE**

SSP  
List No.: 1 Sl No.: 19