

KAUK720008772023



**In the Court of the Senior Civil Judge & Prl. JMFC,
Kumta, at Kumta, Uttara Kannada**

Dated this the 2nd day of June, 2025

PRESENT

**Smt. B.S.Rayannawar, B.A., L.L.B.,
Senior Civil Judge
& Prl. JMFC, Kumta.**

O.S.No.8/2023

Plaintiffs: Smt. Kamakshi Anantha Ambiga,
Aged about 50 years,
Occ. Agriculturist,
R/o. Aganashini, Tq: Kumta.

(By Sri. B.D.S., advocate)

V/s

Defendants: 1. Smt. Kamala Narayan Ambiga,
Age 60 years, Occ: Household,
R/o.Mirjan, Tq: Kumta.

2. Smt. Seeta Narayan Ambiga,
Age 54 years, Occ: Household,
R/o. Magoda, Tq. Honnavara.

3. Smt. Geeta Ganapati Ambiga,
Age 50 years, Occ: Household,
R/o. Agnashini, Tq. Kumta.

4. Smt.Mahalaxmi Ganapati Ambiga,
Age 30 years, Occ: Household,
R/o. Agnashini, Tq. Kumta.
5. Smt. Malati Ganapati Ambiga,
Age 26 years, Occ: Household,
R/o. Agnashini, Tq. Kumta.
6. Smt. Malini Ganapati Ambiga,
Age 26 years, Occ: Household,
R/o. Agnashini, Tq. Kumta.
7. Sri. Raghavendra Ganapati Ambiga,
Age 24 years,
R/o. Agnashini, Tq. Kumta.
8. Smt. Veena Ganapati Ambiga,
Age 22 years,Occ: Household,
R/o. Agnashini, Tq. Kumta.
9. Sri. Kumara Ananth Ambiga,
Age 30 years,Occ: Fishing,
R/o. Agnashini, Tq. Kumta.
10. Smt. Sangeeta Mahendra Harikantha,
Age 28 years, Occ: Household,
R/o. Agnashini, Tq. Kumta.
11. Smt. Rekha Anantha Ambiga,
Age 26 years, Occ: Household,
R/o. Agnashini, Tq. Kumta.
12. Smt. Pushpa Anantha Ambiga,
Age 25 years, Occ: Household,
R/o. Agnashini, Tq. Kumta.
13. Sri. Harisha Anantha Ambiga,
Age 24 years, Occ: Fishing,

R/o. Agnashini, Tq. Kumta.

14. Sri. Nagesha Sukrappa Ambiga,
Aged about 50 years,
R/o. Agnashini, Tq. Kumta.
15. Sri. Vishnu Sukrappa Ambiga,
Aged about 48 years,
R/o. Agnashini, Tq. Kumta.
16. Smt. Gowri Ishwar Ambiga,
Aged about 60 years,
R/o. Agnashini, Tq. Kumta.
17. Sri. Shinnu Jatti Ambiga,
Aged about 58 years,
R/o. Agnashini, Tq. Kumta.
18. Smt. Saroja Dayanada Ambiga,
Aged about 45 years,
R/o. Agnashini, Tq. Kumta.
19. Sri. Sandesha Dayananda Ambiga,
Age about 27 years,
R/o. Agnashini, Tq. Kumta.
20. Smt. Dayananda Ambiga,
Aged about 24 years,
R/o. Agnashini, Tq. Kumta.
21. Smt. Sumitra Chandrakanth,
Aged about 48 years,
R/o. Near old post office,
Moorakatte, Kumta, Tq. Kumta.
22. Smt. Kusuma Krishnappa Ambiga,
Aged about 45 years,

R/o. Anilagoda, Tq. Honnnavara.

(D1- by Sri. N.M.H., advocate,
D2 to 8 by Sri. M.U.N., advocate,
D9 to13 by Sri. N.S., advocate
D14 & 15- by Sri. S.D.N., advocate
D16 to 18- by Sri. S.J.N., advocate
D19 to 18- Exparte)

**Orders on I.A.No.8 dated 04.04.2025, filed by the
Defendant no.1 under Order 6 Rule 17 read with Section
151 of CPC**

Present application filed by the defendant no.1 under order VI Rule 17 of CPC seeking permission to amend her written statement.

PROPOSED AMENDMENT:

1. To add “H.No.68/1” at page 2 para no.4 of written statement.
2. To delete the word “All defendants are entitled for equal share” and to add “first defendant”.
3. To add in para no.7 “Her residential house no.68/1 at Kagal Gram Panchayath”.

2. I.A. supported with the affidavit of first defendant that, she had already filed her written statement, but in her written statement, but in her written statement in page no.2 para no.4, 16th line the house no.68/1 is not mentioned, and in her written statement she has contended that, all the defendants are entitled for share but it has to be amended that the first defendant is entitled for, and in written statement is is also to be added that her residential house no.68/1, Kagal Gram Panchayath. The proposed amendment is very much necessary to prove her case, if the application is allowed no hardship will be caused to the plaintiff on the other if the application is not allowed untold hardship caused to this defendant. Hence prays to allow the application.

3. I.A opposed by the plaintiff by filing written objections, contending that, the application filed by the first defendant is maintainable under law. The application is filed only to drag on the matter, first defendant during her cross examination admitted that the house no.69 situated in Kagal

Gram Panchayat is plaintiffs property, but now filed this false application to grab the property of plaintiff. The first defendant not stated any reason in her application how the house property no.68/1 becomes the suit property, not produced any document with respect to the same. The house no.68/1 is not a suit property, the first defendant till today not taken any contention in her written statement with respect to house no.68/1, on perusal of evidence there is no necessary to add the Kagal Gram Panchayath H.No.68/1, on perusal of the tax paid receipts produced by the first defendant shows that the H.No.68/1 standing in the name of husband of first defendant and the husband of the first defendant is not a member of family of plaintiff and defendants. Hence the property standing in the name of the husband of the first defendant cannot be considered as suit property, the documents produced by the first defendant are created documents. Hence the application filed by the first defendant is not deserves to be allowed, hence plaintiff prays to dismiss the application.

4. Heard both respective counsels for plaintiff and first defendant .

The points that arise for consideration are as follows.

1. Whether the defendant no.1f has made out a sufficient ground that the proposed amendments are necessary for the purpose of determining the real questions in controversy between the parties to the suit?

2. What order?

5. My findings on the above points are as follows:-

Point No.1 : In the Affirmative

Point No.2 : As per final order

For the following:

REASONS

6. **Point No.1:** When the matter was posted for arguments, at this stage the first defendant has filed this application seeking the leave of court to amend the written statement.

7. In order to grant leave to amend the pleadings the party should satisfy three conditions, they are: (a) That the amendment should not cause injustice to the other side, (b) the

amendments shall be necessary for the purpose of determining the real questions in controversy between the parties and (c) no application for amendment shall be allowed after the trial has commenced, 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 trial.

8. That on perusal of the entire materials on record and the proposed amendments, at this stage, I am of the opinion that if this application is allowed no injustice will be caused to the defendants and if this application is not allowed the plaintiff will be put to hardship and if this application is allowed the nature of the suit will not be changed and the proposed amendments to the plaint are necessary for the purpose of determining the real questions in controversy between the parties to the suit.

9. Though learned counsel for plaintiff submitted that, the first defendant till today the first defendant never taken any contention in her written statement with respect to house

property no.68/1 and document shows that the said property standing in the name of husband of first defendant. The husband of first defendant is not the member of family of plaintiff and defendants, hence the application filed by the first defendant is not deserves to be allowed. It is also submitted by the learned counsel for plaintiff that the first defendant in her evidence admitted that the house property no.69 belongs to plaintiff. Hence admittedly H.No.68/1 is not suit schedule property, therefore the burden is on the first defendant to prove the contention taken by her. It is the contention of the first defendant that she is residing in H.No.68/1, so in the absence of pleadings court cannot consider any amount of evidence led by the parties. Moreover the court can allow the parties to amend the pleadings at any stage of the proceedings. Those amendment must be necessary for the court to determine the question in controversy between the parties. Under these circumstances, this court is of the opinion that the proposed amendment does not change the nature of the suit, first defendant has made out a sufficient ground that the proposed

amendments to his plaint are necessary for the purpose of determining the real questions in controversy between the parties to the suit. Accordingly, point no.1 answered in the Affirmative.

10. **Point No.2:** In view of my findings on point No.1, I proceed to pass the following:

ORDER

I.A.No.8 filed by the first defendant under Order 6 Rule 17 read with Section 151 of CPC is hereby allowed on cost of Rs.200/-.

First defendant is permitted to amend her written statement. For amendment and to furnish copy of amended W.S by 10.06.2025.

(Dictated to the stenographer, transcribed by her, then corrected and pronounced by me in the open court on this the 2nd day of June, 2025)

(Smt. B.S.Rayannawar)
Senior Civil Judge
& Prl. JMFC., Kumta.