



CNR: KAHC010248082019

NC: 2026:KHC:51060  
WP No. 36601 of 2019

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 18<sup>TH</sup> DAY OF SEPTEMBER, 2026**

**BEFORE**

**THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM**

**WRIT PETITION NO.36601 OF 2019 (GM-CPC)**

**BETWEEN:**

1. SMT.ALUMELAMMA  
W/O RANGAIAH  
D/O LATE CHIKKATHIMMAPPA  
AGED ABOUT 71 YEARS  
R/O KEREGALAPALYA  
KASABA HOBLI  
MADHUGIRI TALUK  
TUMKUR DISTRICT - 572112

...PETITIONER

(BY SRI. RAMESH K R, ADVOCATE)

**AND:**

1. SMT.RADHAMMA  
W/O LATE KRISHNAPPA  
AGE: MAJOR
2. SRI.KRISHNAPPA  
S/O LATE KRISHNAPPA  
AGED ABOUT 41 YEARS
3. HUCHAMMA  
D/O THIMMAIAH  
AGE: MAJOR

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4. SRI.GOVINDARAJA  
S/O VENKATARAMANAPPA  
AGED ABOUT 51 YEARS
5. SRI.SEENAPPA  
S/O VENKATARAMANAPPA  
AGED ABOUT 41 YEARS
6. SRI.JANARDHANA  
S/O VENKATARAMANAPPA  
AGED ABOUT 41 YEARS
7. SRI.SREEKANTA  
S/O ALUMELAMMA  
AGED ABOUT 51 YEARS

RESPONDENT NOS.1 TO 7 ARE  
RESIDENT OF KEREYAGALAPALYA VILLAGE  
KASABA HOBLI  
MADHUGIRI TALUK - 571112

...RESPONDENTS

(BY SRI.K.P.BHUVAN, ADVOCATE FOR R.4 TO R.6;  
NOTICE TO R.4 AND R.6 IS HELD SUFFICIENT V/O/D 01.07.2021  
PROPOSED R.3(B), PROPOSED R.7(B) AND R.1 ARE SERVED)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE  
CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED  
ORDER DATED 11.04.2019 PASSED BY THE LEARNED PRINCIPAL  
CIVIL JUDGE & JMFC, MADHUGIRI ON I.A.NO.3 IN O.S.NO.270/2008  
PRODUCED AT ANNEXURE-F AS PRAYED FOR AND ETC.

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

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CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

**ORAL ORDER**

Captioned writ petition is filed by the petitioner–plaintiff calling in question the order dated 11.04.2019 passed by the learned Principal Civil Judge and JMFC, Madhugiri, on I.A.No.3 in O.S.No.270/2008, whereby the application filed by the plaintiff under Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short 'CPC') seeking amendment of the plaint by incorporating a property which, according to the plaintiff, was inadvertently omitted from the suit schedule, has been rejected.

2. The learned Judge has rejected the application principally on the ground that the suit for partition was instituted in the year 2008 and the proposed amendment was sought after an inordinate delay of nearly eleven years. The learned Judge has also observed that the plaintiff had not produced any supporting documents in respect of the property sought to be brought on record.

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WP No. 36601 of 2019**

Aggrieved by the said order, the plaintiff is before this Court.

3. Heard the learned counsel appearing for the petitioner–plaintiff and the learned counsel appearing for the respondents–defendants. Perused the records.

4. On perusal of the impugned order, this Court is of the view that the learned Judge has failed to examine the nature of the suit and the circumstances in which the amendment came to be sought. The suit is one for partition and separate possession. The amendment sought by the plaintiff is for inclusion of an additional property in the suit schedule. More importantly, the necessity for seeking such amendment arose in the course of the proceedings and in the backdrop of the specific defence taken by the defendants.

5. The records indicate that the suit was initially decreed. The said decree was thereafter set aside at the instance of the defendants in the appeal and the matter

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**WP No. 36601 of 2019**

came to be remanded for fresh consideration. After remand, defendant Nos.5 and 7 filed their written statement and, at paragraph No.9 thereof, specifically contended that the suit was not maintainable on account of non-inclusion of one residential house in the suit schedule. It is in the backdrop of the said specific defence that the plaintiff, after remand, filed the application seeking amendment of the plaint by incorporating the said property.

6. The aforesaid material circumstances have not received any consideration at the hands of the learned Judge. The learned Judge has proceeded to reject the amendment application primarily by referring to the lapse of time from the institution of the suit, without examining whether the amendment was necessitated by the subsequent stand taken by the defendants and whether such amendment was necessary for effectively adjudicating the real controversy between the parties. The

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fact that the original decree had been set aside and the matter had thereafter been remanded, followed by the filing of a written statement containing a specific objection regarding non-inclusion of the residential house, was a material circumstance which required consideration.

7. In a suit for partition, the Court is required to adjudicate upon the entire subject matter of the partition and, ordinarily, all properties forming part of the joint family estate and in respect of which partition is sought ought to be brought before the Court. Therefore, when the defendants themselves specifically contend that a particular property has been omitted from the suit schedule and that such omission affects the maintainability or proper adjudication of the suit, an application seeking inclusion of such property cannot be rejected merely by referring to the delay in seeking the amendment, without examining the surrounding circumstances.



CNR: KAHC010248082019

**NC: 2026:KHC:51060**  
**WP No. 36601 of 2019**

8. The further observation of the learned Judge that the plaintiff has not furnished the particulars or supporting documents in respect of the property also cannot, by itself, constitute a ground to reject the amendment application. The defendants have themselves referred to the omitted residential house in paragraph No.9 of their written statement. The learned Judge was therefore required to consider whether the particulars sought to be incorporated could be permitted to be brought on record and, if necessary, appropriate particulars or supporting material could be directed to be furnished. At any rate, the absence of supporting documents could not have been treated as an absolute bar to consideration of the amendment application.

9. The impugned order, therefore, suffers from non-consideration of relevant and material circumstances. The learned Judge has applied the general principles governing amendment of pleadings without examining the peculiar

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WP No. 36601 of 2019

factual backdrop in which the present application came to be filed. The rejection of the application, particularly in a partition suit and in the face of the specific defence taken by the defendants regarding the omitted property, has resulted in an order which cannot be sustained.

10. For the foregoing reasons, this Court proceeds to pass the following:

**ORDER**

(i) The writ petition is ***allowed***.

(ii) The order dated 11.04.2019 passed by the learned Principal Civil Judge and JMFC, Madhugiri, on I.A.No.3 in O.S.No.270/2008, produced at Annexure-F, is hereby quashed.

(iii) Consequently, I.A.No.3 filed by the plaintiff seeking amendment of the plaint is allowed.

(iv) The petitioner–plaintiff is permitted to carry out the amendment to the plaint by incorporating the property which was stated to have been omitted from the suit schedule.



CNR: KAHC010248082019

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WP No. 36601 of 2019**

(v) The amended plaint shall be taken on record in accordance with law. The respondents-defendants shall be at liberty to file their consequential pleadings, if so advised.

(vi) All contentions of the parties are left open.

(vii) Pending interlocutory applications, if any, stand disposed of.

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**(SACHIN SHANKAR MAGADUM)  
JUDGE**