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**(2005) 06 AP CK 0090**  
**In the Andhra Pradesh High Court**  
**Case No : C.R.P. No. 168 of 2005**

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|---------------------------------|----|------------|
| Bakka Lingamaiah (died) per LRs | Vs | APPELLANT  |
| Bakka Mallaiah and Others       |    | RESPONDENT |

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**Date of Decision :** 09-06-2005

**Acts Referred:**

Civil Procedure Code Amendment Act, 2002 — Section 16  
Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

**Citation :** (2005) 6 ALD 43 : (2005) 4 ALT 623

**Hon'ble Judges :** L. Narasimha Reddy, J

**Bench :** Single Bench

**Advocate :** M. Rajamalla Reddy, for the Appellant; A. Bichaiah, for the Respondent

**Final Decision :** Allowed

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## Judgement

L. Narasimha Reddy, J.—This revision arises out of an order, dated 30-7-2004, passed by the Court of I Additional District Judge, Medak at Sangareddy, in I.A. No. 289 of 2004 in A.S. No. 26 of 1997. A.S. No. 26 of 1997 arose out of a decree in O.S. No. 67 of 1992, on the file of the District Munsif, Sangareddy.

2. Bakka Lingamaiah, the father of the petitioners herein, filed the suit for partition and separate possession of the suit schedule properties against the respondents herein. He pleaded that the suit schedule properties were held by a common ancestor, late Balarajaiah, and that himself and the respondents are entitled to shares in the same. The suit was contested by the respondents, and ultimately it was dismissed, holding that the suit schedule land was the self-acquired property of late Balarajaiah, and that he in turn executed a will in favour of the respondents. Aggrieved thereby, Lingamaiah, preferred appeal. During the pendency of the appeal, he died and the petitioners came on record as Legal Representatives.

3. The petitioners filed I. A. No. 289 of 2004, under Order 6 Rule 17 C.P.C, seeking amendment to the plaint. They intended to substitute the words "That

the properties were the properties of the deceased father of the parties late Balarajaiah," with the expression "That the properties are the ancestral properties, the father of the parties Balarajaiah has inherited from their ancestors". The petitioners pleaded that their father was not worldly wise and did not instruct the counsel properly, as to the nature of the properties. It was their case that the unamended pleading is rather equivocal and the amendment would bring about an element of certainty.

4. The application was resisted by the respondents, stating that the amendment would alter the nature of the suit and bring about a new cause of action. The lower appellate court rejected the application.

5. Sri M. Rajamalla Reddy, learned counsel for the petitioners, submits that the proposed amendment does not alter the nature of the suit, and if at all anything, it would only clarify certain aspects which were vague in the plaint. He contends that the amendment would enable the parties to secure full adjudication of the matter and no prejudice as such, would be caused to the respondents.

6. Sri A. Bitchaiah, learned counsel for the respondents, on the other hand, submits that the application itself was not maintainable. According to him, no amendment is permissible after commencement of trial, much less at the stage of appeal, in view of the recent amendment to the Civil Procedure Code. He further submits that the trial court had recorded a finding that the suit schedule land was the self-acquired property of Balarajaiah, and in that view of the matter, it is not at all open to the petitioners to contend otherwise. The learned counsel vehemently submits that the petitioners, being the legal representatives, are bound by the pleadings of the original plaintiff, and it is not all open to them to come forward with an application for amendment. Another submission of the learned counsel for the petitioners (sic. respondents) is that, if at all the petitioners are of the view that the suit schedule land is ancestral property, they have to file a fresh suit.

7. It is true that substantial amendments were carried to the CPC in the year 2002, and one such provision is to Rule 17 of Order 6 C.P.C . The necessity to deal with the implications of such amendment in the present case is obviated, because of the reason that Section 16 of the CPC Amendment Act, 2002 has saved the matters instituted prior to 1999, from the operation of the amendment. The suit was filed way back in the year 1992. Therefore, the amendment does not have any impact on the application.

8. Through the proposed amendment, the petitioners intend to bring about an element of certainty, as to the nature of the property. In the unamended plaint, it is stated that the property was held by late Balarajaiah. The pleading is not clear as to whether it was his self-acquired property, or the one inherited from the ancestors. The amendment, at the most, removes the uncertainty on this aspect. It is not as if the nature of the property gets altered only on the basis of this amendment. It is for the parties to adduce evidence in support of their

contentions.

9. The trial Court has taken the view that the suit land is self-acquired property of late Balarajaiah. However, an appeal being the continuation of a suit, everything is at large, and the amendment is not going to change the contours of the litigation. The purpose of permitting amendment to the plaint is to ensure that the parties receive total and complete adjudication of the matter. This Court is of the view that the amendment does not alter the nature of the suit, nor does it bring about a fresh cause of action. On the other hand, it would enable the parties to get adjudication in its entirety.

10. For the foregoing reasons, the C.R.P. is allowed and consequently, the I.A. shall also stand allowed, but on condition that the petitioners pay a sum of Rs. 1,500/- towards costs to the learned counsel for the respondents, within two weeks from today.

11. The appeal is of the year 1997. The lower appellate Court is directed to dispose of the same by the end of 2005.