

ORDERS ON I.A.NO.XXI

The plaintiff has filed this I.A. under Section 151 of C.P.C to recall the order dated 18.06.2024 passed by this court on memo dated 08.10.2023 and to direct the third party applicant to file amendment application seeking permission to amend the plaint as per Civil Rules of Practice.

2. In the affidavit annexed to the application, it is averred that the order passed by this court on memo filed by the third party applicant is against Civil Rules of Practice and C.P.C. The third party applicant should have filed an application under Order VI Rule 7 of C.P.C for carrying out amendment in the application. The court cannot pass any orders on memo. Therefore, the said order has to be recalled. Accordingly, the plaintiff prayed to allow the application.

3. The proposed defendant has filed objections contending that she is the wife of deceased defendant no.5. when the application was filed, the plaintiff had not filed objections. After hearing the parties, the application was allowed. However, by mistake, the proposed defendant was sought to be inserted as defendant no.8, but as the proposed defendant is one of the legal heirs of defendant no.5, he had

filed a memo to rectify the same and direct the plaintiff to array him as defendant no.5(c).

4. There is no error in the order of the court. The averments made in the affidavit are false. The application is filed only to protract the proceedings. Accordingly, the proposed defendant prayed to dismiss the application.

5. I have heard for the learned counsel for the plaintiff and proposed Defendant.

6. Now the following points arise for consideration.

1. ***Whether the plaintiff has made out grounds to recall the order dated 18.06.2024?***

2. What order?

7. Answers to the above points are as follows:

Point no.1: In the Negative.

Point no.2: As per the final order for the following:

REASONS

8. **POINT NO.1:** The plaintiff has filed this suit for declaration and injunction. During the pendency of the suit,

defendant no.5 was reported to be dead. The plaintiff has brought defendant no.5(a) and (b) on record. An application for impleadment was filed by the third party applicant claiming that she is also one of the legal heirs of deceased defendant no.5. The said application was resisted by defendant no.5(a) and (b). After hearing both parties, the application was allowed.

9. It was noticed that the proposed defendant / third party applicant had filed the application to implead her as defendant no.8. However, there were no defendant no.6 and 7 in the suit. Therefore, the proposed defendant could not be added as defendant no.8.

10. Later, proposed defendant had filed a memo stating that she has to be added as defendant no.5(c) as she is claiming to be one of the legal heirs of defendant no.5. The memo was accepted by this court and the plaintiff was directed to array proposed defendant defendant defendant no.5(c).

11. The plaintiff contends that, on the basis of a memo, no substantial order can be passed by this court. Therefore, the order dated 18.06.2024 is bad in law and liable to be recalled. The court, in the order dated 18.06.2024 has

observed that there is only a typographical error in mentioning the number of the defendant. Thus, no prejudice will be caused if the plaintiff is directed to array the proposed defendant defendant no.5(c).

12. The plaintiff, in this application has not brought anything before this court that the order caused him hardship and prejudice. Though it can be accepted that on the memo, no substantive order can be passed, the court has not passed any substantive order. It has only directed the plaintiff to array the proposed defendant as defendant no.5(c).

13. The court has invoked inherent power conferred under Section 151 of C.P.C to pass the order dated 18.06.2024. Therefore, I am of the opinion that there are no grounds to recall the order and the plaintiff has to comply the order of this court.

14. The learned counsel for the plaintiff has relied upon the decision of the Hon'ble High Court of Karnataka in the case of **Kamalpasha Vs. Chairman District Wakf Committee reported in 1988 KarLJ 401**, wherein, Hon'ble High Court has held that the amendment seeking correction of a clerical mistake can be allowed, but the introduction of new facts cannot be allowed.

15. The aforesaid ratio has no application in this case. The court has not any order on the application for amendment. It has passed orders on memo directing the plaintiff to array the proposed defendant as defendant no.5(c). Introduction of new facts or circumstances are allowed by the order on the basis of memo.

16. In the application, the plaintiff has also sought a direction / suggestion to the proposed defendant to file an application Under Order VI Rule 17 of C.P.C to amend the plaint. Such direction / suggestion cannot be given to proposed defendant. The plaintiff can only seek amendment of the plaint. The defendant can seek amendment to the written statement and not the plaint. On this ground also, I.A. deserves to be dismissed. Accordingly, Point no.1 is answered in the Negative.

17. **POINT NO.2:** In view of the discussion on point no.1, for the reasons stated therein, I proceed to pass the following;

ORDER

I.A.No.XXI filed by the plaintiff
Under Section 151 of C.P.C. is
hereby rejected.

For carrying out amendment as
per order dated 18.06.2024.

Call on 16.10.2024.

Sd/-
I Addl. Civil Judge & JMFC.,
Belagavi.