

**OS.165/2015**

**09.02.2021.**

**ORDER ON IA No.III**

The plaintiff has filed this application U/O.VI Rule 17 praying to amend the plaint.

The defendants have filed the objection and prayed to dismiss the application.

Heard both the sides.

It is the case of the plaintiff that, during the pendency of this case, the defendants have built a house by encroaching upon the suit property. Hence, it is just and necessary for the plaintiff to plead the same and to ask for additional relief of mandatory injunction.

It is contended by the defendants that, the plaintiff has not mentioned the proper dimensions of the alleged encroachment, the identity of the property is vague, as on the date of filing itself the defendants had started the construction work as per the permission granted by the concerned Gram Panchayat in the year 2012 as such the relief claimed by the plaintiff is time barred. Hence, prayed to dismiss the application.

This suit was filed on 19.11.2012, this application is filed on 18.11.2019, the defendants have mainly contended that they

have not at all encroached the land belonging to the plaintiff and vehemently argued with regard to the point of limitation. It is well settled law that, “Merits of amendment is hardly relevant”. This Court cannot look into the truthfulness or falsity of the proposed amendment at this stage, it is always the burden on the plaintiff to prove the alleged encroachment.

The plaintiff's say is that, during the pendency of the suit the defendants have encroached but, the plaintiff has not pleaded the specific date in the application, at this juncture I would like rely upon the ruling of the Hon'ble Apex Court reported in **AIR 2004 SC 4102**, wherein the Hon'ble Supreme Court of India was pleased to hold as hereunder; ***“(A) Civil P.C. (5 of 1908), O.6 R.17- Amendment of pleading – Sought after substantial delay – Can be allowed – Amendment sought after relief is barred by limitation – Can even be allowed in appropriate cases if that subserves cause of justice and avoids further litigation.”***

If this application is not allowed plaintiff will not be given full opportunity to prove his case and certainly it will not subserve the justice and will certainly lead to

unnecessary further litigation. Hence, as pointed out earlier it is always the burden of the plaintiff to prove the encroachment, the merits of amendment is not much relevant while considering the application for amendment. With regard to the limitation, the aforesaid ruling of the Hon'ble Apex Court has made the point very clear, even if the relief is barred by limitation, the same can be allowed in appropriate case if it subserves the cause of justice and avoids further litigation. Further, the nature of the suit will not changed and the proposed amendment sought is necessary for the purpose of determining the real question in controversy between the parties. This is a suit which was dismissed for non-prosecution on 03.11.2015 however it was restored as per the order dated.09.10.2019 in Civil Misc. No.02/2016. Now the plaintiff has come up with this application, hence it would be appropriate for this Court to impose some reasonable costs on the plaintiff for filing this application at the belated stage. With these observations, I proceed to pass the following;

### **ORDER**

The IA No.III filed by the plaintiff U/O.VI Rule 17 of CPC is hereby allowed on cost of Rs.2,500/- payable to the defendants.

For carrying out of amendment and to  
furnish the amended plaint by.03.03.2021.

**09.02.2021**

**Civil Judge and JMFC  
Kittur.**