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**IN THE COURT OF CIVIL JUDGE AND JMFC, JEWARGI
AT: JEWARGI.**

**Present:- Sri. KASHINATH V. UPPAR, B.Sc., LL.B.,
Civil Judge and JMFC, Jewargi.**

Dated on this 21st day of February - 2025.

O.S.No.178/2015

Plaintiffs : Saleem Patel & another

V/s.

Defendants: Raja Patel and another

RANK OF THE PARTIES ON I.A-11

Applicant/Plaintiff : Saleem Patel & another

(By Sri B.B., Advocate)

V/s

Opponents/Defendants: Raja Patel and another

(By Sri J.V.H., Advocate)

ORDERS ON I.A.No.11

I.A.No.11 is filed by the Learned Counsel for the Plaintiff under Order 6 Rule 17 R/W Sec.151 of Code of Civil Procedure for seeking permission of the Court to carry out the proposed amendment which is as follows :

Proposed Amendment:

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In prayer, after para No.1, para No.1 (a) may be added as under:

A decree of possession may kindly be granted directing the defendants to deliver the possession of suit property shown in para No.2 of the plaint in favour of plaintiffs.

2. The Plaintiff sworn to an affidavit in support of the application, wherein he has stated that, he has filed the present suit against the Defendants for seeking the relief of declaration and perpetual injunction in respect of suit schedule property claiming that, plaintiff is owner in lawful possession of suit property. As per the defense ownership as well as plaintiff possession over the suit property is in disputed. In case, if hon'ble court comes to conclusion that, plaintiff is not in possession of the suit property, under this circumstances plaintiff suit would be dismiss only on the ground that, the plaintiff not seek a consequential relief of possession hence, it is necessary to plaintiff to seek a consequential relief of possession to avoid the future litigation. The proposed amendment would not change the cause of action or nature of suit. If this application is allowed no harm would be caused to the other side, if not allowed plaintiff would be put to heavy loss which cannot be compenated in term of money, hence, plaintiff prays to allow this application. **With these averments the Plaintiffs has sought for allowing the I.A.No.11.**

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3. The learned Counsel for the Defendants have filed objections to I.A.No.11 wherein he has stated that, the application of plaintiff belated stage and it is not maintainable. The evidence on all the issues have been lead by the parties to the suit. The case is posted for arguments on merits, hence the present application is not maintainable. If the application is allowed the cause of action will change and parties are to be go behind the case to lead to lead on the point of possession. The plaintiff want to withdraw the admissions given by the though amendment, hence, the application is not maintainable. Further the relief of possession as sought by the plaintiff is also barred by law of limitation. **With these contentions, the learned Counsel for the Defendants sought for rejection of I.A No.11.**

4. Heard the arguments of the Learned Counsels appearing for the parties and perused the materials on record.

5. Now the following points arise for consideration of this Court are.

Point No.1: Whether the Plaintiff has made out grounds for allowing I.A.No.11 and thereby permitting him to carry out the proposed amendment as sought for?

Point No.2 : What Order?

6. The findings of this Court on the above points are as under:

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Point No.1:- In the Affirmative

Point No.2:- As per the final order for the following

REASONS

7. **Point No.1:** It is the case of Plaintiffs that, against the defendant for relief of declaration and perpetual injunction in respect of suit schedule property claiming that, plaintiff owner in lawful possession of the suit property. As per the defense of the defendants ownership as well as the possession over the suit property is in dispute. The already case was set-down for the arguments. It is a prayer of the plaintiffs that, if court comes to conclusion that, plaintiff is not in possession of the suit property, under the such circumstances the suit of the plaintiff would be dismiss only on the ground that, plaintiff not a seek a consequential relief of possession. Hence, it is necessary to seek a consequential relief of possession to avoid the future litigation. The objection of the defendants are that, the application is filed at the belated stage, and when the matter has reached the stage of argument. The plaintiff want to withdraw the admission given by through amendment, hence application is not maintainable. The relief of possession as sought by the plaintiff is barred by law of limitation.

8. The Learned Counsel for the Plaintiff submitted before the Court that the proposed amendment is necessary to determine the real controversy between the parties to the

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suit and further, to avoid the future litigation the proposed amendment is necessary. Per contra, the learned counsel for defendants submits that, the application is filed at the belated stage. The plaintiff want to withdraw the admission given by through amendment, hence application is not maintainable. The relief of possession as sought by the plaintiff is barred by law of limitation.

9. In light of the arguments canvassed by the Learned Counsels for the parties, this Court has carefully perused the materials on record. The plaintiff in the plaint has pleaded that, he is the absolute owner and possession over the suit schedule property. Per contra, the defendant has pleaded that, the plaintiff and his mother already relinquished their right. The defendant is denied the title and possession of the plaintiff. After perusal of the said pleadings, it appears to this Court that there is a sufficient pleadings in the plaint and if the present application is allowed no loss or hardship will cause to the Defendants.

10. As per under Order 6 Rule 17 of Code of Civil Procedure **“The court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties”**.

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11. At this stage it appears to this court that the proposed amendment sought by the Plaintiff is necessary in order to determine the real questions in controversy between the parties. Further the said amendment is just and proper for adjudication of the dispute. As per the Proviso of Order 6 Rule 17 of CPC, no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before commencement of trial. It is the case of plaintiff that, declaration and injunction. The defendants in their written statement denied the title, and possession of the defendant. No doubt the case is posted for arguments. More ever this case is 09 years old case. But the proposed amendment is necessary to determine the real controversy between the parties to the suit. If the application is not allowed then the plaintiff has to file another suit for seeking a relief of possession and in term it will lead to multiplicity of proceedings no doubt there is delay on the part of plaintiff to file the present application, but that is not a solo ground for a rejection of the said application. The delay in filing the application can be compensated by way of awarding the cost to the defendants. More ever, defendant has liberty to file additional written statement on the ground of the relief sought by the plaintiff and lead his evidence on the possession over the suit schedule property. **With these observations, this Court has answered Point No.1 in the Affirmative.**

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12. **Point No.2:** For the aforesaid discussion on Point No.1, this Court proceeds to pass the following:

ORDER

I.A.No.11 filed by the Learned Counsel for the Plaintiff under Order 6 Rule 17 of Civil Procedure Code is hereby allowed on cost of Rs.2,000/-.

The learned Counsel for the Plaintiff is permitted to carry out the amendment as sought for.

(Dictated to the stenographer in the open court and transcribed her, script revised, corrected and then pronounced by me in the open Court on this the 21st day of February, 2025)

(Sri. KASHINATH V. UPPAR)
Civil Judge & JMFC,
Jewargi.

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