



R/o. A/3/43 Sector B,  
CIDCO Colony, New Panvil,  
Raigad, Maharashtra *and others.*

[D-1 By Sri. KBN, Adv]  
[D-2(a)-(c) By Sri. AKD, Adv.]  
[D-3 By Sri. RMP, Adv.]  
[D-4 By Sri. KR D, Adv.]

**I.A.No.XII**

- Applicants:** 1. **Shaikh Ummer Hassan Haji Shaikh  
Pltffs. **Ahamad , since deceased by his  
LRs.****
1. Smt. Naseemabi W/o. Shaikh  
Ummar Hasan and others.

Vs.

- Opponents:** Shri. Mohammed Abdul Latif  
Defts. Shaikh and others.

**ORDERS ON I.A. NO.XII**

This is an application filed by the learned counsel for the plaintiffs under the provisions of Order 1 Rule 10 R/W.Sec.151 of C.P.C. to implead the following persons:

**Proposed Defendants No.5 to 11:**

1. Smt. Hawabi W/o. Mohammed Siddiki, Age: 68 years, Occ: Household, R/o. Siddique Manjil, Near Bapuji College, Sadashivgad, Karwar.
2. Wahida W/o. Fazal Mohammed Shaikh, Age: 46 years, Occ: Housewife, R/o. Opp. Hescom (KEB), Kone, Karwar.

3. Imtiyaz Sayyed Haroon, Age: 50 years, Occ: Business.
4. Shri. Abubakkar Sayeed Haroon, Age: 48 years, Occ: Business.
5. Shri. Abdul Karim Sayeed Haroon, Age: 46 years, Occ: Business.
6. Shri. Husain Sayyed Haroon, Age: 45 years, Occ: Business.
7. Salimabi Sayyed Mustakh, Age: 52 years, Occ: Housewife.

as defendants No.5 to 11 on the ground that the defendants No.2 and 3 died during the pendency of the suit and their legal heirs were brought on record. The legal heirs of deceased defendants No.2 and 3 have filed the written statement, wherein, they have taken a contention that the legal heirs of Aminabi, Hawabi, Sharifabi and Khatumbi are the necessary parties to the suit. During the course of cross-examination of P.W.1, it is also suggested the same fact and the defendants are unnecessarily trying to create technical issues. The plaintiffs do not want to take any risk and therefore, to avoid technicalities, they have filed the application. Therefore, in order to enable the court to do justice and to avoid unnecessary technicalities, it is necessary to implead those persons as parties to the suit.

Otherwise, irreparable loss and injury would be caused to the plaintiffs which also leads to multiplicity of proceedings. Hence, this application.

2. The learned counsel for the defendants has filed objections contending that the application is not maintainable either under law or on facts and liable to be dismissed with costs. The plaintiffs have filed the application to drag on the matter. The plaintiffs being the dominant-litus have to take their own decision either to implead or not to implead the proposed defendants and they cannot proceed on the basis of the contention taken by the defendants. The plaintiffs are not ready to accept that the proposed defendants are necessary parties to the suit. The evidence is already commenced and therefore, the court cannot permit the plaintiffs to implead the proposed defendants to the suit. The application is filed at the belated stage and hence, the application is liable to be dismissed with costs.

3. I have heard the arguments on both the sides and perused the application, objections and pleadings of both the parties and documents placed on record.

4. Now the points that would arise for my consideration are as under :

1. Whether the plaintiffs have made out sufficient grounds to come to the conclusion that the proposed defendants No.5 to 11 are the necessary parties to the suit for the determination of the real matter in dispute and they are the necessary parties to the suit in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit and whether the application filed by the plaintiffs under the provisions of Order 1 Rule 10 R/W.Sec.151 of C.P.C is deserves to be allowed?

2. What Order?

5. On considering the arguments canvased on both the sides and materials on record, now, my answers to the above points are as under:

Point No.1: In the **affirmative**.

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

## **REASONS**

6. **Point No.1:-** The learned counsel for the plaintiffs has argued with force that the legal heirs of deceased defendants No.2 and 3 have taken a contention in their written statement that the legal heirs of Aminabi, Hawabi, Sharifabi and Khatumbi are the necessary parties to the suit and the proposed defendants are none other than the legal heirs of defendants in the earlier proceedings and therefore, in order to avoid technicalities and to do the justice and to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, it is necessary to permit the plaintiffs to implead the proposed defendants No.5 to 11 in this suit.

7. In support of his submission, the learned counsel for the plaintiffs has relied upon a decision rendered by the Hon'ble Supreme Court in ***Appeal (Civil) No.2592/2005*** in between ***Amit Kumar Shaw & another vs Farida Khatoon & another on 13 April, 2005***, wherein, while dealing with the provisions of Order 1 Rule 10 of C.P.C., the

Hon'ble Supreme Court has held that the object of Order 1 Rule 10 is to discourage contests on technical pleas, and to save honest and bona fide claimants from being non-suited. The power to strike out or add parties can be exercised by the Court at any stage of the proceedings. Under this Rule, a person may be added as a party to a suit in the following two cases: (1) When he ought to have been joined as plaintiff or defendant, and is not joined so, or (2) When, without his presence, the questions in the suit cannot be completely decided. The power of a Court to add a party to a proceeding can not depend solely on the question whether he has interest in the suit property. The question is whether the right of a person may be affected if he is not added as a party. Such right, however, will include necessarily an enforceable legal right.

8. The learned counsel for the plaintiffs has also relied upon a decision reported in **AIR 2010 Gauhati 187** in between **Somnath Banerjee vs. Smt. Arati Rani Chakraborty and another**, wherein, while dealing with the provisions of Order 1 Rule 10(2) of C.P.C., the Hon'ble High Court of Gauhati has pleased to held that the application for words "at any stage of proceedings"- not only means at

stage of argument, but even after completion of trial and decree is passed, that also includes appellate stage. On the same principles, the learned counsel for the plaintiffs has also relied upon a decision reported in **AIR 2010 Sikkim 8** in between **Sita Devi and another vs. Shamsheer Prasad Gupta and others**.

9. The learned counsel for the plaintiffs has also relied upon a decision reported in **2000(1) KCCR 36** in between **Thimmanna and others vs. B.I. Sharada and others**, wherein, while dealing with the provisions of Order 1 Rule 10 of C.P.C., the Hon'ble High Court of Karnataka has pleased to held that the Order allowing impleadment cannot be said to amount to a case decided and court exercised judicial discretion. Controversy involved may effectively decided and avoids multiplicity of legal proceedings.

10. Per contra, the learned counsel for the defendants has vehemently contended that the evidence is already commenced and therefore, the court cannot permit the plaintiffs to implead proposed defendants No.5 to 11 in this suit and the plaintiffs have filed the application to drag on the proceedings. It is further contended that the plaintiffs

being the dominant-litus have to take their own decision either to implead or not to implead the proposed defendants and they cannot proceed on the basis of the contention taken by the defendants to file application and the plaintiffs are not ready to accept the fact that the proposed defendants are the necessary parties and therefore, the application is deserves to be dismissed.

11. In the light of the arguments canvased on both the sides, I have carefully gone through the principles laid down in the cited decisions including provisions of Order 1 Rule 10 of C.P.C. which deals about Court may strike out or add Parties.

12. As per this provisions of law, the court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate

upon and settle all the questions involved in the suit, be added.

13. Now, keeping the arguments of both the sides, principles laid down in the above cited decisions including provisions of law in mind, let us consider as to whether the proposed defendants No.5 to 11 are the necessary parties to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit.

14. The plaintiffs have filed the suit against the defendants seeking Partition and Separate Possession of suit schedule properties and also for declaration. The defendants have resisted the suit by filing detailed written statement. This court has framed the issues on 23.11.2018. On behalf of plaintiffs, the plaintiff No.6 has been examined as P.W.1 and got the documents marked as Exs.P.1 to P.11.

15. It is at this stage of proceedings and when the case is set down for further evidence of plaintiffs' side, the present application being filed to implead proposed defendants No.5 to 11 in this suit. It is pertinent to note here that this is a suit for Partition and Declaration. Admittedly, the proposed defendants are none other than

the legal heirs of Aminabi, Hawabi, Sharifabi and Khatumbi who are none other than the parties in the earlier proceedings between the plaintiffs and defendants and their ancestors.

16. It is also important to note here that the defendants No.2 and 3 died during the course of pendency of the suit and legal heirs of deceased defendants No.2 and 3 have taken a specific stand in their written statement that the suit of the plaintiffs is bad for non-joinder of necessary parties. Smt. Aminabi, Hawabi, Sharifabi and Khatumbi being the parties to the earlier proceedings and therefore, their legal heirs who are proposed defendants No.5 to 11 are necessary parties to the suit and also to adjudicate the real controversy between the parties and in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit. Under these circumstances, if this application is allowed by imposing some costs, then it would meet the ends of justice. Otherwise, the chances of multiplicity of proceedings including wastage of costs and time of both the litigants cannot be ruled out. It is in this sense, I hold that the plaintiffs have made out sufficient grounds to come to

the conclusion that the the proposed defendants No.5 to 11 are the necessary parties to the suit to adjudicate the real controversy between the parties effectually and completely Hence, **I answer point No.1 in the affirmative.**

17. **Point No.2**:- In view of my findings on point No.1, I proceed to pass the following:

**:ORDER :**

I.A.No.XII filed by the plaintiffs under the provisions of Order 1 Rule 10 R/W.Sec.151 of C.P.C., is hereby allowed with costs of Rs.3,000/-.

The plaintiffs are permitted to implead the proposed defendants No.5 to 11 in this suit.

The learned counsel for the plaintiffs is directed to carry out necessary amendment and to furnish the amended plaint on or before next date of hearing without fail.

(Dictated to the Stenographer, transcribed by her, revised and corrected by me, signed and then pronounced in the Open Court on this the **28<sup>th</sup> Day of February, 2022.**)

**( N.M. Ramesha )**  
Prl. Senior Civil Judge,  
Karwar.