

I.A.No.XVI**Applicants:
Plaintiffs**

1. **Shaikh Ummer Hassan Haji Shaikh Ahamad , since deceased by his LRs.**

1. Smt. Naseemabi W/o. Shaikh Ummar Hasan and others.
Vs.

**Opponents:
Defts.**

1. Shri. Mohammed Abdul Latif Shaikh and others.

ORDERS ON I.A. NO.XVI

I.A.No.XVI is filed by the counsel for the plaintiffs under Order VI Rule 17 R/W.Sec.151 of C.P.C. to amend the plaint as per the proposed amendment.

2. In the accompanying affidavit, it is submitted that the application filed for impleading defendants No.5 to 11 was allowed by this court and since the said application was allowed, there is a necessity to amend the plaint and to introduced one para in the plaint to clarify about the status of the defendants No.5 to 11 and why and for what reasons, they are impleaded in this case. It is also submitted that the defendants No.5 to 11 are formal parties and they are not in possession and enjoyment of any portion of the property and the suit house is demolished long back and they have

vacated the suit property. Hence, on these reasons and other assigned in the application, prayed to allow the application.

3. The counsel for the defendant No.4 has filed objections to the said application and it is submitted that the instant I.A. is the outcome of malafide intention to drag on the matter years together without any just and reasonable cause. As per the amended C.P.C. once the trial begins the parties are not entitled to move application again and again for the amendment of plaint or written statement which goes against their case. In this case, the P.W.1 in the cross-examination made a answer that defendants No.5 to 7 are only formal parties without claiming any relief against them. Every time any new answers given in deposition will not give cause of action against plaintiffs and defendants to seek amendment to implead the plea narrated in deposition again and again and if it is allowed, there will be not end for litigations, as it goes to the stage of filing written statement by the defendants and also requiring the court to frame fresh issue. In view of the amended C.P.C. such activities are curbed by the legislature, not giving any scope of delay to parties to cause any delay in proceedings or speedy

administration of justice. There is no meaning or justification at all in filing the I.A. for seeking amendment of plaint pleadings and the plea raised are uncalled for at this stage of proceedings. Hence, prayed to reject the application.

4. The counsel for the defendant No.6 has also filed objections to the said application and it is submitted that the present application filed by the plaintiff is not maintainable. The plaintiff had filed the application under Order 1 Rule 10 of C.P.C. to implead the defendants No.5 to 11 on the fact that the answering defendants are the necessary party and without impeading defendants No.5 to 11, this court would not be able to properly adjudicated the dispute in the present case. It is further submitted that once the defendants are impleaded on the basis of the application under Order 1 Rule 10(2) of C.P.C. the plaintiff cannot be permitted to state now that the defendants No.5 to 11 are formal party and no relief is claimed against them. It is submitted that if the plaintiffs have dragged the present defendants No.5 to 11 without any relief against them then the plaintiffs have to face the consequences for mis-joinder of the parties as Addl. Issue is already framed by this court after filing of the written statement by the defendant No.6.

It is further submitted that on the basis of the written statement of defendant No.6, Addl. Issue was framed whether the suit filed by the plaintiff is barred under law of limitation. It is submitted that the plaintiff was cross-examined by the counsel for the defendant No.6 on the last date of hearing and the relevant question in respect of law of the limitation was asked and question on mis-joinder was put the present applicant and on the said cross-examination, the defendant No.6 was able to prove the Addl. Issue framed by this court and due to the evidence, the applicant has filed the present application to come out from the said admission and same cannot be allowed at this stage. It is submitted that provision of Order VI Rule 17 of C.P.C. cannot be invoked at any time on the whims on the plaintiff. It is pertinent to point out that the applicant has not even stated the delay in filing the present application from the date of passing of the Order by which the defendants No.5 to 11 was allowed to implead them in the present suit. It is submitted that without giving any explanation in filing the present application, the present application cannot be allowed at this stage to fill the lacuna and to come out from the admission made before this court.

It is submitted that the plaintiff has not made out any ground to allow the present application. Hence, prayed to reject the application.

5. Perused the application, objections and heard both sides.

6. The following points arise for my consideration:

1. Whether sufficient grounds are made out to amend the plaint as prayed in the application ?

2. What Order?

7. My findings on the above points are as follows:

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

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

REASONS

8. **Point No.1**:- The proposed amendment is made by the counsel for the plaintiffs for the limited purpose of stating that defendants No.5 to 11 were impleaded as formal parties and there is no prayer of the plaintiffs against

the defendants No.5 to 11 and they are impleaded only to avoid technicalities. Except the formal amendment, there is nothing in the proposed amendment which will change the nature of the suit or the cause of action. The proposed amendment will also not withdraw any admission made earlier. It is only on the basis of the contention taken by the defendants in the written statement that the parties have been impleaded. Though the present amendment application is filed at a belated stage, however, it is made after the order impleading defendants No.5 to 11. The proposed amendment does not fill up any lacuna and hence, the contentions raised by the counsel for the defendants No.4 and 6 in the objections are not sustainable, no prejudice is likely to be caused to the defendants No.4 and 6, if the amendment application is allowed. Hence, in order to avoid multiplicity of proceedings and for the just decision of the case on merits, it is just and proper to allow the application. Hence, I answer Point No.1 in the **affirmative**.

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

:ORDER :

I.A.No.XVI filed by the counsel for the plaintiffs under Order VI Rule 17 R/W.Sec.151 of C.P.C. is hereby allowed.

The plaintiffs are permitted to amend the plaint as per the proposed amendment within 14 days from the date of this order and to furnish the amended copy of the plaint.

(Dictated to the Stenographer directly on system, typed by her and corrected by me, signed and then pronounced in the Open Court on this the **23rd Day of March, 2023.**)

(Reshma J. Rodrigues)
Prl. Senior Civil Judge,
Karwar.