

IN THE COURT OF SUB JUDGE KAHALGAON

T.S. No. 15/2015

Dated 06.03.2020

1. This record has been placed before me today for order on petition dated 19.11.2019 filed by defendant no. 1 u/O 6 r 17. A rejoinder to the same has been filed by plaintiff on 27.01.2020. the learned counsel for the parties were heard at length on last date.
2. The learned counsel for the petitioner/defendant that inspite of due diligence certain important facts could not be brought earlier and it is very necessary to bring the same in written statement of the petitioner for just decision of the case. The proposed amendment are formal in nature and they will not change the nature of the suit.
3. While opposing the petition the learned counsel for the plaintiff submits that the present petition is not maintainable. The suit is at the stage of evidence of defendant and at this belated stage the amendment cannot be allowed. The present petition is barred by the provisions of Order XII r 17 of the C.P.C. this is filed just to harass the plaintiffs. The suit is pending since 2005 and is still at the stage of evidence of defendants. The evidence of plaintiff is already closed. On these grounds the learned counsel pray for rejection of the petition.
4. Heard both side and perused the record from perusal of record it appears that the plaintiff has filed the present suit for recovery of possession, injunction and damages. The plaintiff is claiming the suit land on the basis of sale deed dated 26.10.14 executed by one Maheshwari Prasad Mahesh @ Maheshwari Sah the brother of defendant no. 1. while the case of defendant no 1 is that the suit land was allotted in his share during partition and his brother has no right to execute the sale deed. By the proposed amendment the defendant amend Para 12 of his written statement and insert the detail of suit plot 560. he also wishes to specifically plead that the vendor of plaintiff has no right to negotiate and sell the suit land. The other amendments are for correction of typing mistake. By the other proposed amendments the defendants only wishes to clarify their pleading. They are not putting a new case. The Hon'ble High Court in case law reported at **2017 (4) PLJR 785** in the case of **Parma Prasad and others Vs Alok Rai and others** has held that even though the defendant have acted in gross negligence in preferring the amendment in the written statement after much delay, however , to balance the equity, amendment is allowed subject to payment of cost to the plaintiff. The principle is well settled that the amendment in the written statement is to be liberally allowed and the rigorous applicable while considering the prayer for amendment in the plaint are not attracted with all force while considering the prayer for amendment in the written statement. Accordingly the present petition is allowed in interest of justice. But to compensated the other party a cost of Rs 2000/- (Two thousand only) is imposed on petitioner. The petitioner/defendant no. 1 is directed to incorporate the amendments after payment of the cost within prescribed time.

**Sub Judge
Kahalgaon**