

Reg. Civil Suit No.112/2020 .

CNR No.:MHPU02-008670-2019

Kanchan Ajit Chandane**Vs.****Dashrath Namdev Chandane****ORDER BELOW EXH. 18**

Defendant Nos.1 to 3 have filed this application under Order 6 Rule 17 of C.P.C. for amendment in the written statement. They have submitted that they have filed written statement and reply to application Exh.5 on 23/04/2021. After the talks of compromise, the plaintiffs were ready to give 1/4th share to them in the suit property but the advocate of the defendant refused the said compromise. The plaintiffs were demanding 1/3rd share in the suit property. Therefore compromise went failed. Therefore they have filed this application for inclusion of other property belonging to them and defendant No.1 as well as the amounts received jointly.

2. They have further submitted that Flat No.8 area 47.96 sq.meter, 2nd floor, Espagity Complex I-1/2, Parijat Society, Sector No.15, Kharghar, Navi Mumbai which in possession of plaintiff No.1 to 3 and an amount of Rs.42 to 45 Lack in respect of Gratuity, P.F. and other benefits of deceased Ajit Dasharath Chandane received by defendant No.1 from Wartsila Diesel Mumbai Company be included in the suit property and their 1/4th share may be given to them. They

have received the Flat Agreement from Sub-registrar office Panvel on 15/09/2023. The proposed amendment will not change the nature of the suit and no loss will be caused to the plaintiffs. If the application is rejected they will suffer irreparable loss. Lastly they have prayed that by allowing this application, proposed amendment may be allowed.

3. The plaintiffs have filed their reply vide **Exh.20**. They have opposed the application. They have submitted that the flat No.8 of Kharghar, Navi Mumbai was self acquired property of deceased Ajit Chandane. The defendants have no right to seek partition in the amount of P.F., Gratuity and other benefits of deceased Ajit Chandane. If the proposed amendment allowed, it will change the nature of the suit. Hence the proposed amendment is illegal. The defendants have not made economic help to deceased Ajit Chandane in purchasing the flat. Therefore, the defendants have no any right in the property of Ajit Chandane. The defendants are not Class-1 heirs of deceased Ajit Chandane. If the application is allowed, they will suffer irreparable loss. Lastly they have prayed that the application may be rejected with costs.

4. Heard learned advocate for both side. Perused record. It shows that the plaintiffs have filed this suit for partition, possession, declaration and permanent injunction. Defendant No.1 to 3 have filed their written statement vide Exh.16. Now defendant No.1 to 3

want to include Flat No.8 as stated above and the amount of P.F., Gratuity of deceased Ajit Chandane be included in the suit property by way of proposed amendment in para No.7 of their written statement. It is pertinent to note here that the present application is filed for amendment in written statement. However, the proposed flat and amount of P.F. and Gratuity has to be included in the suit property in plaint as the defendants are claiming their share in such property. There is no counter-claim of defendants hence no purpose would be served if the proposed amendment is allowed. The defendants instead of filing application to direct the plaintiffs for adding the property in the plaint, have filed the present application. Hence the application is not maintainable. In result I pass the following order.

ORDER

Application Exh.18 is rejected.

Date :18/06/2024
Place : Pune.

(S.A.Bajaj)
5th Addl. Judge, Small Causes Court and
Jt. C.J.S.D., Pune.

CERTIFICATE

I affirm that the contents of this PDF file order are same word for word as per original order.

Name of Steno	:	A.P.Shende, Stenographer [Grade-II]
Court Name	:	S. A. Bajaj 5 th Addl. Judge, Small Causes Court and Jt. C.J.S.D. Pune.
Order Date	:	18/06/2024
Order signed by Presiding Officer on	:	18/06/2024
Order uploaded on	:	19/06/2024