

ORDER ON IA NO.II

1. This application is filed by the plaintiffs with a prayer to permit them to amend plaint as sought in the application.
2. In the subjoined affidavit filed along with the application, the plaintiff No.2 has sworn in the affidavit and contended that, the proposed amendment is simple in nature and necessary to incorporate in the plaint. The defendant No.5 is brought on record. The proposed amendment is in respect of facts about the defendant No.5 who is brought on record. Further it is stated that, the proposed amendment will not change the nature of the suit. Hence prays to allow the application.
3. On the other hand, the defendant No.1 to 4 have filed objection and contended that, application is not tenable under the law and facts. Further it is stated that, already partition was held between Prakash and Mangesh. Further Sy. no.82, 83, 177, 10 and 24/2 were allotted to the share of Mangesh in the partition and since the partition already held in respect of agricultural lands, the suit claiming partition in agricultural land is not maintainable. Further it is stated

that, the question of claiming relief against the defendant no.5 does not arise as he is in exclusive possession of aforesaid land. Further it is stated that the application filed by the plaintiffs is with an intention to mislead and to create confusion to the court. Hence it is stated that, application is untenable in law and prayed to reject the application.

4. Heard the arguments advanced by the plaintiffs and defendants counsels.

5. Upon considering the application, affidavit filed along with application, and objections the following points arise for my consideration:

P O I N T

1. Whether the plaintiffs have made out sufficient grounds to permit them to amend the plaint as sought in application?

2. What Order?

6. On hearing both sides and perusal of pleadings and, objections on record, my answer to the above points are;

Point No.1: In the affirmative.

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

R E A S O N S

7. **Point No.1:** This application is filed by the plaintiffs when the case was posted for plaintiff evidence.

8. I have carefully gone through the pleadings of the parties, application, reasons stated in the affidavit filed along with IA, objections and other materials on record. On going through the above materials, it appears that, the plaintiffs are intending to insert a para no.5A regarding the additional facts in respect of suit property R.S. no.10 situated as Bhalke Village. Further it appears that they are also intending to add a relief after prayer at Sl. No.A, regarding decree of permanent injunction restraining the defendant No.5 from interfering in the suit land R.S No.10. Further it appears that, the proposed amendment is very much necessary, if the proposed amendment is allowed then no prejudice will be caused to the other side. If the proposed amendment is allowed then it will neither change the nature of suit nor cause of action. Therefore, the proposed amendment is necessary to adjudicate the matter in

dispute. Hence, considering the nature of suit and also grounds stated in the affidavit, the plaintiffs have made out grounds to permit them to amend the plaint. Therefore, in view of the above reasons, **I hold the point No.1 in the affirmative.**

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

O R D E R

The I.A.No.II filed by the plaintiffs U/Order 6 Rule 17 R/w sec.151 of CPC is hereby allowed.

The plaintiffs counsel is directed to amend the plaint as sought for in the application.

For amendment.

Call on 06-11.2023

**Senior Civil Judge and JMFC.,
Khanapur.**