



Order Passed Below Exh. 16

Vaijnath Vs. Manohar and others

This is an application for amendment of plaint filed by plaintiff. Perused the say of defendant no.2 and 3 filed thereon. Heard the learned Advocates appearing for the plaintiff as well as defendant no.2 and 3.

2] This is a suit for the relief of partition and separate possession of land Gat no.57 between plaintiff and defendants, Gat no.223 between plaintiff and defendant no.3 to 5 and for perpetual injunction. In this application, the plaintiff wish to add alternative relief of reopening of the partition including the property land Gat no.55 alongwith the properties referred in the claim clause. Also, the plaintiff wish to add para no.6A that, the property land Gat no.55 can also be subject matter of partition if court comes to the conclusion that there is no partition between Shrirang and Pandurang. Accordingly, the plaintiff prayed to allow this amendment application filed under Order VI Rule 17 of Code of Civil Procedure .

3] Per contra, defendant no.2 and 3 filed their say on the overleaf of this application and submitted that, in the present application the plaintiff is claiming alternative relief without describing four boundaries of suit property and also not described where the property is

situated. As per their contention the plaintiff has not mentioned who is the owner of those properties. Hence, they prayed to reject the application.

4] Perused all the matter on record. One has to consider that, the main purpose for allowing amendment is to minimize litigation. If the present application would be rejected, then it would cause multiplicity of proceedings. It is settled law that, Court has to take liberal view in allowing the amendment application. In the present matter, trial has not been commenced. Therefore, considering the pleading of both the parties and to avoid multiplicity of litigation, I find that, to put an end to the controversy raised in the suit the present application ought to have been allowed.

5] Even the object of Order VI Rule 17 of the Code of Civil Procedure is that, the Court should adjudicate on the merits of the case that may be necessary for determining the real question in controversy between the parties. Order VI Rule 17 consists of two parts. The first part is discretionary and leaves it to the Court to order amendment of pleading while the second part is imperative and enjoins the Court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties.

6] It is epochal to note that, laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice. A prayer cannot be refused merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. It is important to note that, the plaintiff has filed this application due to

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alleged subsequent events occurred after presentation of this suit. Therefore, to serve the ultimate cause of justice and to avoid further litigation, I pass the following order.

ORDER

- 1] Application (Exh. 16) is allowed at the costs of Rs.2,000/- payable to defendant no.2 and 3.
- 2] The plaintiff to carry out necessary amendment as prayed for within fourteen days from the date of this order.

Date : 20/11/2023

SD/-
(Smt. S. N. Hurgat)
Jt. Civil Judge Junior Division,
Parbhani.