

**ORDER PASSED BELOW EXHIBIT 40 IN R.C.S. NO. 506/2018**

The present suit is filed for partition, possession and perpetual injunction. By way of present application filed under **Order VI Rule XVII, Code of Civil Procedure, 1908**, the plaintiff has prayed to amend the plaint. The defendants vehemently resisted the said application by filing say vide **Exhibit 47**. Heard Ld. Counsel Shri. A. S. Godage for the plaintiff. The defendants filed written argument vide **Exhibit 48**.

02. The plaintiff has come up with case that, the suit property is her joint ancestral family property which she inherited by her father and not yet subjected to partition. The plaintiff has undivided inherent share in suit property and the defendants deprived her from enjoying her respective share. Hence, the present suit. The defendants have defended the suit claim on the ground that, the suit property is self acquired property and not joint ancestral property. Dated 04.12.2017, they purchased house property in the name of the plaintiff situated at Sangamner Kd. from Gulab Shaikh and Jabin Shaikh for consideration of Rs. 2,00,000/- and on the same day she executed registered release deed of suit property in favour of the defendants. Hence, prayed to dismiss the suit.

03. By way of present application, the plaintiff has proposed to amend the plaint by adding pleadings as under -

*'The plaintiff decided to purchase house property from Gulab Shaikh and Jabin Shaikh situated at Sangamner Khurd for consideration of Rs.*

..2..

2,00,000/- and accordingly she executed notary document dated 04.12.2017. The defendants took undue advantage of illiteracy of the plaintiff and in collusion of Gulab Shaikh and Jabin Shaikh fraudulently took plaintiff's signature on the release deed and fraudulently got executed the release deed bearing No. 2824/2017 by means of fraud and misrepresentation.' And further prayed to add prayer clause as, 'the release deed bearing No. 2824/2017 shall be declared as void.'

04. The defendants resisted the application and come up with theory that, the proposed amendment is not within limitation. The delay to carry out the proposed amendment is not justified. The proposed amendment may change the nature of the suit and the cause of action. Hence, prayed to reject the present application.

05. In the light of rival contentions of both the parties, following points arose for determination which are answered along with its findings and reasons as under :

<b>Sr.No.</b>	<b>Points</b>	<b>Findings</b>
<b>01.</b>	Whether the proposed amendment is necessary for the purpose of determining the real questions in controversy between the parties ?	..Affirmative.
<b>02.</b>	Whether the proposed amendment is barred by <i>Proviso</i> of Order VI, Rule XVII of the Code of Civil Procedure ?	..Negative.
<b>03.</b>	What order ?	As per final order.

### REASONS

#### As to point No. 1 :-

06. Perused the record. It appears that, it is the case of the plaintiff that, she never executed release deed of suit property and never waived her rights and interests in favour of the defendants. On the contrary, it is the case of the defendant that, the plaintiff executed release deed duly registered before Sub-Registrar by virtue of which she waived her inherent rights and interest in the suit property in favour of the defendants, therefore, she has no concern with the suit property. In such facts and circumstances of the case *prima facie* it appears that, the entire dispute stands upon the *factum* whether or not the plaintiff executed registered release deed in favour of the defendants and waived her inherent rights and interest. The said *factum* is in consonance with the proposed amendment and the pleadings in the plaint, from which it can be said that, the proposed amendment is necessary to determine the real questions in controversy between the parties as provided in **Order VI, Rule XVII of the Code of Civil Procedure**. Therefore, The contentions of the defendants that, the proposed amendment may change the nature of the suit and cause of action is hereby rejected. I opine that, the proposed amendment is just and accordingly, I answer point No. 1 in affirmative.

#### As to point No. 2 :-

07. The defendants have resisted the application on the ground that, the proposed amendment is not within limitation. **Order VI, Rule XVII of the Code of Civil Procedure**, specifically

..4..

provides that, '*the Court may at any stage of the proceeding allow either party to alter or amend his pleadings*'. So also there is no such specific provision prescribing the limitation to carry amendment except the proviso of **Order VI, Rule XVII of the Code of Civil Procedure** which provides that, *no amendment shall be allowed after the trial has been commenced*. The case in hand shows that, the trial has not yet been commenced therefore the proposed amendment is not barred by the proviso of **Order VI, Rule XVII of the Code of Civil Procedure**. Therefore, the contentions of the defendants that, the proposed amendment is not within limitation is hereby rejected. Accordingly, I answer point No. 2 in negative. In the light of aforecited discussion while answering point No. 3 following order is passed :-

**ORDER**

- 1) The application vide **Exhibit 40** is allowed.
- 2) The plaintiff is hereby directed to carry out the proposed amendment within 14 days from the date of this order and to supply the copies of same to all the defendants within stipulated time.
- 3) The plaintiff is directed to pay costs of Rs. 700/- to all the defendants in total.
- 4) The application is disposed off accordingly.

Date : 12/11/2021.

( **Mugdha. M. Gangurde** )  
**3<sup>rd</sup> Jt. Civil Judge Junior Division,**  
**Sangamner.**