

MHAH080020952023

Dattu Amaluk Sangale



Vs.

Ramdas Amaluk Sangale etc.

ORDER BELOW EXH. 26 IN RCS NO. 970/2023

This is an application for amendment of plaint by the plaintiff under order VI rule 17 of Code of Civil Procedure, 1908 (hereinafter referred in short as 'C.P.C').

02. Perused the application and say filed at Exh. 28 and the record. Application is well supported by an affidavit (Exh. 27).

03. Heard both sides. They argued as per their application with say respectively.

04. The proposed amendment is in respect of addition of defendant No. 10 to 40 into title clause of the plaint, addition of gat numbers as suit properties into para No. 1A and 1C of the plaint, addition of para No. 3A into the plaint.

05. In this regard, I want to quote proviso of O. VI, R 17 of C.P.C. which runs as under -

'Provided that no application for amendment shall be allowed after the trial has commenced, unless the courts comes to the conclusion that in spite of due diligence the party could not

have raised the matter before the commencement of trial'.

06. Proviso to O. VI R. 17 itself clears the position that, if proposed amendment is sought after commencement of trial, then question of due diligence arises. Perused the roznama, it reveals that, matter is one year old. In the case at hand, the issues have been framed on 02.01.2025 at Exh. 23. The suit is filed for seeking relief of partition, permanant injuction in respect of the suit properties. The trial is not commenced yet. The proposed amendment is sought by plaintiff before filing of an affidavit-in-lieu of chief-examination i.e. before commencement of trial. Hence, question of due diligence does not arise into existence.

07. In this regard, profitable reliance can be kept on **Rajkumar Gurawara Vs M/s S.K.Sarawagi reported in AIR 2008 SC 2303**, in which Hon'ble Supreme Court held that, *pre-trial amendmets are to be allowed liberally than those sought to be made after commencement of trial.*

08. The proposed amendment *prima-facie* appears to be technical. It will not certainly change the nature of the suit. Thereby no prejudice will be caused to the defendants. Proposed amendment is necessary for the purpose of determining the real questions in controversy between the parties.

09. In view of above discussion and nature of suit, the application succeeds and deserves to be allowed in terms of following order.

ORDER

1. The application (Exh. 26) is allowed.
2. The plaintiff is directed to carry out necessary amendment forthwith and supply the copies of amended plaint to the court and defendants within next 14 days from today.
3. Parties to note.

Sangamner
Date : 20.03.2025.

(K. K. Patil)
2nd Jt Civil Judge, Jr. Dn.,
Sangamner.