

ORDER BELOW EXH. 95.

1. Plaintiffs have filed present application as per order VI Rule 17 of the Code of Civil Procedure 1908 (For short the Code) to amend their plaint for adding relief of partition and accordingly adding new parties therein. Plaintiffs submitted that they have filed present suit for permanent injunction against defendants. Property described in para No. 1 (hereinafter for short referred to as the suit property) was originally owned by forefather of plaintiffs namely Bhika Aaba Ghorpade & he had 8 'Aana' i.e. half share in suit property. After demise of Bhika, names of Bhimaji and Kalyabai were mutated in half share of suit property as per mutation entry No. 3999. Thus, plaintiffs and proposed defendant No. 11A to 11E are having half share in suit property which situated towards western side & remaining area of remaining defendants is situated towards eastern side. As defendants denied shares of plaintiffs and defendant Nos. 11A to 11E, they had to file suit for partition of their share as well as to get declared their title thereof, however suit is inadvertently filed only for relief of injunction. Plaintiffs further submitted that while filing the suit they pleaded about their shares in suit property and for avoiding multiplicity of litigation proposed amendment is essential. It is also submitted that though evidence is recorded in present case, this recorded evidence is supplementary for proposed amendment and due to that no nature of the suit will be changed rather suit can be decided once. It is also submitted that due to such amendment no harm will cause to defendants, rather they

will have opportunity to put their defence accordingly. Hence, they prayed for allowing the application.

2. Defendants opposed to present application by filing their say overleaf of the application. Defendants contend that case is part heard and only to prolong the trial present application is filed. It is also contended that due to propose amendment nature of the suit will be changed and therefore present application needs to be rejected.

3. Perused the record. Heard Ld. Advocates of respective parties. Ld. Advocate Shri. A. S. Chaudhary argued that in fact suit had be filed for partition of shares, however it remained to be done inadvertently. Merely on the ground of mistake, prayer of plaintiffs cannot be refused. While filing the suit plaintiffs specifically pleaded that they have half share in suit property which is denied and obstructed by defendants. As shares of plaintiffs and defendants are mentioned as common shares in right of records of the suit property, declaration of partition of their shares is necessary. And for that purpose plaint must be amended. He also argued that due to such amendment dispute between parties will be resolved finally. While arguing he placed his reliance on judgment of Hon'ble Bombay High Court in case of **Babarao Pandurang Patil Vs. Kalawati Rambhauji Sathawane reported in 2019 (4) Mh. L. J. 255**. Wherein same situation arose. Suit was filed for injunction and after recording most of evidence amendment application for adding relief of partition was filed. Trial Court had allowed application for amendment. Hon'ble

Lordship confirmed order of Ld. Trial Court and held that for avoiding multiplicity of litigation and deciding finally real question in controversy amendment can be allowed even at later stage.

4. Per contra, Ld. Advocate Shri. Naik argued that plaintiffs could have amend their plaint earlier when once they had filed application for amending the plaint. However they failed and at this belated stage present application is filed only for protracting trial. It is also argued that if present application is allowed suit will be languished further and unnecessary complication will be created. Hence, he prayed for rejecting the application.

5. Certainly, plaintiffs have pleaded in their plaint that they have half share in suit property, it is also seen that names of both parties are shown in 7X12 extract as holders of common shares in suit property. It is further pleaded in the plaint that half share of plaintiffs is denied and obstructed by defendants. In view of earlier pleadings of the plaint suit had to be filed for partition of shares, however plaintiffs failed to do so. As per para 2 of Order VI Rule 17 of the Code after commencement of the suit amendment can be allowed if the court comes to the conclusion that in spite of due diligence the party could have raised the matter earlier before commencement of trial. Ld. Advocate Shri. Chaudhary argued that earlier suit was filed by other Advocate and when plaintiffs came to him he learnt that present suit will be infructuous for want of decree of partition. For deciding finally the present suit, relief of partition & declaration must be added and accordingly relevant necessary parties must be impleaded in this suit. Certainly, as right of plaintiffs in half share is denied by defendants, mere decree of injunction will not be

fruitful for serving the purpose of suit. Even by issuing decree of injunction, dispute between parties will not be resolved. Hence, I am of also view that suit had to be filed for partition of shares. However, now entire evidence of plaintiffs is recorded, suit is pending for evidence of defendants. Question arise as to at this belated stage amendment can be allowed or not ? Here for deciding this question ratio laid down by Hon'ble Supreme Court in case of **Sajjam Kumar Vs. Ram Kishan (3 Judge Bench) reported in 2005 (13) SCC 89** will be helpful. In present case Hon'ble Supreme Court held that though the plaintiff has to seek amendment at an early stage of the suit, still the proposed amendment should be allowed as it is necessary for the purpose of bringing to the fore the real question in controversy between the parties and the refusal to permit the amendment would create needless complication at the stage of execution in the event of the plaintiff succeeding in the suit.

6. In view of such ratio certainly amendment which is necessary to decide real question in controversy can be allowed even at belated stage. Further in judgment on which Ld. Advocate for plaintiffs relied Hon'ble Bombay High Court had confirmed order of amendment at the last stage of the case. In present suit mere decree of injunction in the event of plaintiffs succeeding in the suit will not be suffice to resolve all disputes between parties. Hence, proposed amendment must be allowed for final adjudication of the case and accordingly proposed parties which are stated to be necessary parties for partition suit must be added in the plaint. Due to such amendment though some time will be consumed further, however

further litigation can be avoided and all disputes between parties can be decided finally.

7. It can not also be denied that plaintiffs could have amend their plaint earlier. Due to default of plaintiffs, unnecessarily defendants will have to face litigation in future some more time and therefore some cost needs to be imposed on plaintiffs for compensating defendants. Hence, following order would meet the ends of justice.

ORDER

1. The application is allowed subject to cost of Rs. 2000/- to be paid to contested defendant Nos. 1 & 2.
2. Plaintiffs shall make amendment as sought in the plaint within 14 days from today and provide amended copy forthwith.
3. Issue summons to new defendants, if required.
4. Defendants shall take note of this order.

Place:- Rahata.

Date :- 20/09/2022.

(S. V. Khaire)

2nd Jt. Civil Judge, Junior Division,
Rahata.