

**: Order below Exh.74 in R.C.S.No.103/2008 :**

( Passed on : 28.01.2014 )

The plaintiff has filed this application for amendment of the plaint. Defendant No.1 took objection to the same by way of say (Exh.79). Heard Ld.Adv.Shri. S.J. Wakade for the plaintiff and Ld.Adv.Shri. L.A.Bedre for the defendant No.1.

Ld.Adv.Shri.Wakade submitted that, applications (Exh.53, 61 and 70) were filed for amendment and due to typing mistake and on technical ground the said applications were not pressed. Considering nature of dispute amendment in respect of cancellation of sale-deeds dated 05.06.2008 and 17.02.1971 and declaration in respect of the suit properties is necessary. Due to amendment nature of the suit is not going to be changed. On the contrary, if the amendment is not allowed, injustice would be caused to the plaintiff. Lastly the Ld.Advocate requested to grant the application.

Ld.Adv.Shri. Bedre submitted that, previously the plaintiff had filed applications (Exh.53, 61 and 70) which were not pressed by him. Hence, he can not file such type of application again. Hence, the present application is filed just to prolong the matter. Since filing of the suit there is no change in the nature of circumstances. The amendment claimed by the plaintiff is contrary to the suit. The plaintiff had not mentioned as to when cause of action arose to file the present application. The Misc.Appeal No.115/2008 filed by the plaintiff is not pending as it was withdrawn by him on 11.04.2012. As the plaintiff is intending to prolong the matter and harass the defendant, the application may be rejected.

The record shows that there is main dispute between the parties regarding 2 Acre, 11 R. land bearing S.No.71. Originally this suit is filed for injunction. Now by way of amendment the plaintiff is claiming relief in respect of two sale-deeds and declaration of ownership.

Order 6, Rule 17 of Code of Civil Procedure provides that, amendment in pleadings can be allowed which is necessary for the purpose of determining the real question in controversy between the parties. In this case ownership and possession of the suit property is real question in controversy between the parties. It can not be disputed that, earlier R.C.S.No.92/1974 was instituted by the plaintiff and Civil Appeal No.69/1979 was preferred against the said judgment. Thereafter, father of defendant No.2 had instituted R.C.S.No.120/1979 against the plaintiff and others and this is third round of the litigation.

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In view of above mentioned circumstances, for final settlement of dispute between the parties on merit amendment is necessary in the plaint. Because the suit in present form which is in respect of consequential relief is not maintainable in absence of main relief of declaration of ownership. The defendants are claiming that, there is bar of limitation for the reliefs. However, it is part of merit and after hearing both the parties appropriate judgment will be passed. As the defendant would get opportunity of resisting the plaintiffs claim after amendment there is no question of causing any loss to him.

The record shows that, this is fourth amendment application since 20.12.2010 and since last 3 years the suit is pending without any progress due to amendment applications. As since last 3 years the defendant is attending the Court and as the plaintiff is submitting amendment applications and afterwards withdrawing the same defendant No.1 is entitled for special costs. In the circumstances, as amendment is necessary for final determination of the dispute between the parties, I pass following order.

**: ORDER :**

The application is allowed subject to costs of Rs.20,000/- to be paid within three days to defendant No.1 only.

Date : 28.01.2014.  
Karjat.

( S.U. Mahadar )  
Civil Judge, J.D., Karjat.