

MHAH230006112024

**ORDER BELOW EXH.23 IN R.C.S. No. 239/2024**

1. Plaintiff in present suit has placed this application under Rule 17 of Order VI of Code of Civil Procedure, 1908, seeking leave of the court to carry out amendment in plaint to replace her contention with regards to area of the property in which she is intending to claim her right and interest. Defendant 8 has resisted the application by filing his say. Even defendants no.11 and 12 have resisted the application by filling their say at Exh.45. Perused the application and say. Heard, Ld. advocates appearing for plaintiff, defendant no.8 and defendants no.11 and 12. Having regards to the rival contention of both the parties and basic factors which are essential to be taken into account while entertaining an application placed under Rule 17 of Order VI of Code of Civil Procedure, 1908, following points have been arisen for my discussion and determination and I have recorded my findings against each of the point along with reason as under :-

Sr. no.	Points	Findings
1	Whether the proposed amendment is necessary for the just decision of the the case and to resolve the all the questions into controversy between the parties ?	Yes
2	What order ?	Application is allowed.

REASONS**AS TO POINTS NO. 1 & 2**

2. Through present suit, plaintiff has sought partition and separate possession of the suit property, by claiming 1/2 share in the suit property. However, by way of amendment, plaintiff wants to plead that instead of 1/2 share, she is entitled to get 2H 36R land in the suit property. Through proposed amendment, plaintiff wants to replace her contention with regards to her entitlement to get actual share in the suit property. Having regards to the overall contention of plaintiff, it appears that wording “1/2” came to be typed inadvertently. Through proposed amendment plaintiff wants to rectify the error occurred inadvertently. It is settled position of law that inadvertent mistakes can not be refused to be corrected when mistakes are apparent from the reading of the pleading and amendment can be permitted to rectify typographical or inadvertent error. When an amendment in plaint has been sought to rectify inadvertent errors, liberal approach has to be adopted while entertaining the present application. Thus, it would be appropriate to permit the plaintiff to carry out amendment to rectify the inadvertent errors as detected in plaint.

3. Though the plaintiff is permitted to carry out amendment as prayed for, no prejudice would be caused to the defendants as proposed amendment has been sought to rectify the inadvertent error. Hearing of the suit has not been commenced. Therefore, test of “due diligence” is not required to be passed by the plaintiff. Moreover, due

to proposed amendment, nature of the suit would not be changed. Having regards to the nature of proposed amendment, proposed amendment seems to be necessary for just decision of the suit and to resolve all the questions into controversy between the parties. Therefore, it would be appropriate to permit the plaintiff to carry out amendment in plaint as prayed for. Hence, I answer point no. 1 in affirmative and pass following order for point no. 2 :-

: **ORDER** :

1. Application at Exh.23 is allowed.
2. Plaintiff is permitted to carry out amendment in plaint as prayed for, within 14 days from today, subject to costs of Rs.600/- payable to defendants no.8, 11 and 12.

Date :- 26/11/2025
Shrigonda

(H. J. Pathan)
2nd Jt. Civil Judge, S.D.,
Shrigonda.