

ORDER BELOW EXH. 26 IN R.C.S. NO. 08/2019

(CNR No. MHAK070000742019)

(Passed on 26/11/2019)

1. Present application is filed by plaintiffs for permission to amend the plaint under Order 6, Rule 17 of Civil Procedure Code (hereinafter referred to as the 'Code' for short).
2. Perused application and say filed below Exh.30 by defendant no.1 and say filed below Exh.31 by defendant no.2. Heard both parties.
3. Plaintiffs have contended that suit is for partition and separate possession. It is the case of plaintiffs that they have received the original document about the house property i. e. tax receipt, Grampanchayat Nakashi Namuna-8 Tq. Balapur, District Akola and map of the house from the Secretary of the Grampanchayat Nakashi Tq. Balapur, District Akola. The documents are public documents and it is just legal and necessary to file on record for the adjudication of the trial. Therefore it is just, legal and necessary to amend the para 2 of the plaint to described the nature of the document of the house property. It is further submitted that the proposed amendment is just, legal and proper and it will not change the nature of the proceeding and nature of the suit will not change if this application is allowed by the court. So no prejudice will be caused to the defendants by making this amendment and allowing this application for amendment by this court in the interest of justice.
4. Claim of plaintiffs is strongly denied by defendants in their written statement. Defendant no. 1 contended that proposed pleading is merely a list of reliance only. Further documents cannot be treated as part and parcel of plaint. Plaintiffs are introducing new story. Hence, be rejected. Defendant no. 2 denied that plaintiffs have received said original document about the house property. Plaintiffs want to introduce

new story by way of amendment not only this but also plaintiffs are unnecessarily trying to prolong the matter. If application of plaintiffs is allowed then nature of suit will change and it will cause prejudice to defendants. It is further submitted that considering the fact on record there is no merit in the application. Hence, they prayed for rejection of the application with costs.

5. Considering application, say and after hearing both parties following points arise to which I have given findings on the basis of reasons enumerated thereunder :

POINTS	FINDINGS
1 Whether the proposed amendment is necessary to resolve the real questions of controversy between the parties ?	In the affirmative
2 Whether plaintiffs are entitled to proposed amendment ?	In the affirmative
3 What order ?	Application allowed

REASONS

6. As to Point nos. 1 to 3 :

Present suit is instituted for declaration, partition, separate possession and cancellation of sale deed. The documents mentioned by plaintiff in the application are filed below list Exh. 28. Perusal of these documents reveal that they are recent documents. Further, proposed amendment bears merely description of these documents. Suit is for framing issues. Thus, hearing in the suit is not commenced. Considering the nature of proposed amendment which is based on recent documents, no prejudice would be caused by the same to defendants. Therefore, in fact such proposed facts would be necessary to resolve the real questions of controversy between the parties with respect to status of suit property.

This cannot be said to change the nature of suit or to prejudice defendants, as they would be at liberty to seek consequential amendment, to confront witnesses of plaintiff and to lead their negative or positive evidence to that aspect, pursuant to allowing this application. Proposed amendment is not inconsistent with original pleading of plaintiffs. Therefore, proposed amendment, if allowed, would neither change nature of suit, nor put a new story, nor prejudice defendants and in fact it would be necessary for coming to a proper conclusion. Hence, point nos. 1 and 2 are answered in the affirmative. Therefore, application deserves to be allowed. Hence, in answer to point no. 3, following order is passed.

: ORDER :

1. Application is allowed.
2. Plaintiff to amend pleadings accordingly and supply copy of amended plaint, within 14 days from the date of this order.
3. Costs on applicant.

Balapur.
Date:- 26.11.2019

Sd/-
(C. P. Raghuvanshi)
C. J. J. D., Balapur.

Certificate

I affirm that the contents of this P.D.F. file are same word for word as per original order.

Name of Steno	:	Shaikh Rafique
Court Name	:	C.J.J.D. & J.M.F.C., Balapur.
Date	:	26.11.2019
Signed by Presiding Officer on	:	26.11.2019
Uploaded on	:	26.11.2019
