

MHAU060005982006



R.C.S./600077/2006

**Bizalabai Wo Bhaskar Aher Vs. Devidas Namdeo Ziman**

ORDER BELOW EXHIBIT 217 IN REGULAR CIVIL SUIT NO. 77 OF  
2006

1. The present application is filed below on behalf of the Defendant number 7 inter alia for seeking amendment in the written statement.

2. The Defendant number 7 has averred that the suit is filed for partition and separate possession. The Defendant number 7 is added as a necessary party to the suit. The property which is possession of the Defendant number 7 is subject matter of the suit. The Defendant number 7 has filed written statement at Exhibit 99. During the recent time the Plaintiff has amended the plaint. The Defendant has quoted such different amendments made by the Plaintiff which relate about the date of death of Vithoba, change in name as one Defendant was transposed as Plaintiff, the date of cause of action etc. The Defendant has annexed the proposed amended written statement with the application. Thus, it is prayed to allow the Application for the sake of proper adjudication of the suit.

3. The Plaintiff has filed say below Exhibit 225 and resisted the application. It is his contention that the application is misconceived and not tenable at law. It is based on ill-grounds. The Plaintiff has denied the entire contentions in the applications. It is stated that instead of filing additional written statement the Defendant has sought for amendment and that is completely unwarranted. There is no necessity to grant permission

as the Defendant could have filed additional written statement. Hence, it prayed that the application is not tenable and thus it be rejected.

4. I have heard the arguments advanced by both sides. I have gone through the record of the case. It is apparent from the record that many events have occurred since the inception of the suit. It also seems that the one of the Defendant has transposed herself as Plaintiff during the pendency of the suit. It is also apparent that the Plaint is amended several times and even new suit properties were also included time to time. The Plaintiff is extended such opportunity to amend his pleadings. The proposed amendment by the Defendant shows that it is just reply to the amendment made by the Plaintiff. Thus, the Defendant either had option to amend the written statement or file additional written statement. However, it is settled law that the procedural aspect is hand maid of justice. Hence, there is no point in entering into technicality of the application. If the application is allowed then it will not cause any prejudice to the Plaintiff. Hence, I pass following order:-

- a. The application is allowed.
- b. The Defendants shall carry out the amendment on or before next date and provide amended copy of written statement.
- c. The matter is time bound, hence it is expected that the compliance of this order is done forthwith.
- d. Costs in cause.

21 October 2024

Vinayak Dattatray Patil  
Civil Judge Junior Division, Kannad