

RCS No. 68/2017
CNR No. MHAU1000059912017
Vilas Nade and Ors. V/s. Bismilla Khan and Anr.

Order below Exh.24

1. This application is filed on behalf of plaintiff under Order 6 Rule 17 of C.P.C. for amendment of plaint. The present suit is for partition of land Gut No.26, situated at Mambapur, Tal. Khultabad, Dist. Aurangabad adm. 42 R.(hereinafter referred as “Suit property”)

2. According to plaintiffs they have filed suit for partition and possession. However, in the plaint the word “**Separate Possession**” and some particulars has not included which are necessary to be included. Therefore, plaintiff prayed to allow to insert **paragraph No.8-A** in the plaint below paragraph No.8 as given in application in bold type. Plaintiff also prayed to allow to add in application for temporary injunction a praying sentence “**defendant shall not obstruct in possession of plaintiff**”.

3. Defendants opposed application by filing their say below Exh.24. It is contended by defendant that, present application is not maintainable. Plaintiffs have not mentioned under which provision present application is filed. Suit property is not ancestral property of plaintiffs. The amendment sought by plaintiffs would change nature of suit. Lastly defendants prayed to reject the application.

4. Following points arise for my determination and I gave my findings thereon for the reasons stated as follow:

Sr. No.	Points	Findings
1]	Whether the proposed amendment is necessary for the purpose of determining the real questions in the controversy ?	Yes.
2]	What order ?	Application is allowed.

REASONS

Point Nos. 1 and 2 :

5. Perused plaint, written statement and documents on record. Heard both the learned advocates.

6. Learned advocate for plaintiff argued that, the word “**Separate Possession**” and some particulars remained to be typed in the plaint. The hearing of suit is yet to be started. The amendment sought is necessary for proper adjudication of the suit. Hence, amendment be allowed.

7. The learned advocate for defendants submitted that, the fact which includes amendment was within the knowledge of plaintiffs prior to filing of the suit, hence amendment can not be allowed. Only facts arising subsequently can be added by way of amendment. The proposed amendment will change the nature of the suit. Application is filed after filing of written statement.

8. On going through record it appears that in claim clause no words as “Separate possession” are written . However, plaintiffs prayed in prayer clause B) as “ Suit property be partitioned and equal share be given to plaintiffs along with separate possession”. Thus, though in claim clause words sought to be added not written, they prayer clause specifically reveals that plaintiffs filed suit for partition and separate possession. Similarly, the

paragraph No.8-A sought to be inserted is in relation to plaintiffs' share and

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their right of succession in suit property. The hearing of suit is yet to be started and even issue are not framed. The defendants have ample opportunity to put their case. The amendment sought by plaintiff is necessary for proper adjudication of suit and to determine the rival claims of the parties. It will neither change nature of suit nor it will affect issues of suit.

9. As far as objection of defendants, the learned advocate for defendants has not pointed out how the amendment will change the nature of suit. Thus, argument of defendants side that amendment will change nature of suit is of casual defence and there is no substance. The valuable rights of both parties are involved in the suit. Hence, to avoid multiplicity of proceedings and to determine rights of party properly, amendment application needs to be allowed. Defendant can be compensated for delay and inconvenience caused to him. In my view cost of Rs.200/- would be just and proper to compensate the defendant.

10. Considering the facts and circumstances of present suit and discussion as above, application of plaintiff deserves to be granted. Hence, I answer point No. 1 in the affirmative and in the result of point No. 2, I proceed to pass the following order.

ORDER

1. Application is allowed subject to cost of Rs.300/- be paid to the defendant.
2. The plaintiff shall deposit the costs within a week and file the amendment plaint after carrying out the amendment in a plaint within 14 days.

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Date : 27/02/2019

(G.R.Tiwari)
Civil Judge (J.D.),
Khultabad.

CERTIFICATE

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

Name of the Stenographer : Shri Akash S.Chavan
Court : C.J.J.D. & J.M.F.C. Khulatabad
Date of order signed : 27.02.2019
Order signed by the Presiding officer on : 27.02.2019
Order uploaded on : 28.02.2019