

**ORDER BELOW EXH. 85 IN R.C.S. NO. 145/2009
(CNR NO. MHBI-1100-2442-2009)**

By this application, defendant no. 2 has prayed for permission to carry out amendment in his written statement vide Order VI Rule 17 of the Code of Civil Procedure, 1908.

2. Say called from the plaintiffs. They filed their say on the application itself and contended that defendant No. 2 had previously filed his written statement. Now he cannot amend the written statement. Hence prayed for the rejection of the application.

3. Heard both sides. Perused the record. It appears that the present suit is filed for partition and separate possession. The trial court thereafter decided the case and partly decreed the suit. Thereafter defendant preferred an appeal against the decree. Hon'ble district court allowed the appeal, set aside the decree, and remanded the matter for fresh trial. In the said judgment i.e. in R.C.A. No. 76/2020 the Hon'ble District Court observed in para 12 that, " In addition, it could be said that the issue of limitation also was required to be framed in terms of mandate laid by Sec. 3 of the Limitation Act." As such the proposed which is relating to limitation can be allowed. Further, an amendment to plead a limitation would not change the nature of the suit but would introduce a legal defense. The consideration here would be whether the amendment would cause undue prejudice to the plaintiff, which generally is not the case with the plea of limitation, as it is a matter of law and not of surprise. Hence the application of defendant no. 2 deserves to be allowed. Hence the following order:

ORDER

1. The application at Exh. 85 is allowed.
2. After cost compliance, Defendant No. 2 is to carry out an amendment in his written statement (Exh. 63) as prayed and submit a copy of amended written statement on or before the next date.

Date: 10.01.2024

(R. R. Jadhav)
4th Jt. Civil Judge Jr. Div., Georai