

MHBI150010392013**ORDER BELOW EXH. 44 IN R.C.S.No.
446/2013**

- 1) This application is filed by the plaintiff under Order VI, Rule 17 and Order I, Rule 10 of the Code of Civil Procedure.
- 2) By way of present application the plaintiff intends to increase area of suit property bearing Gut No. 504 as 1 H 28 R instead of 32 R. Moreover, she intends to add necessary explanation about 96 R area out of Gut No. 504, which was sold defendant No.1 to 3 in favour of defendant No.5 to 9 including proposed defendant No.7 to 9. She intends to add her half blood sister as party to the suit.
- 3) By filing say at Exh. 46 defendant No.5 and 6 have strongly objected to present application. As per their say trial is already commenced. Evidence of the plaintiff is concluded. Matter is pending for further evidence of the plaintiff. In these circumstances, only with intention to prolong the trial present application is filed. Reason for belated application is not at all mentioned. Considering overall age of the suit and unexplained delay caused in moving present application, finally they have prayed for dismissal of the application.
- 4) Perused application, say thereon and record.
- 5) Heard learned Advocates appearing for the plaintiff and defendant No.5 and 6.
- 6) Admittedly present application is moved by the plaintiff after concluding of her evidence. But, only on that count it would not be just and proper to reject present application. Because it is settled law that, the Proviso to Order VI Rule 17 is not a complete bar nor shuts out entertaining later application and it is for the Court to consider the same. Furthermore, delay

would not be the ground to reject the amendment application if the proposed amendment is necessary to determine the real controversy between the parties.

7) Therefore, it is necessary to see that whether the proposed amendment is necessary to determine real controversy between parties. Moreover, it is necessary to see that whether the plaintiff satisfies that she could not have discovered ground which is proposed to be pleaded by amendment, in spite of due diligence.

8) Admittedly present suit is filed by the plaintiff for partition and separate possession. Considering nature of suit it is obligatory on her part to include entire properties in common hotchpot, otherwise, her suit will go on that count. Moreover, it is must for her to implead each and every necessary party in the suit. Perusal of record reveals that, objections on both counts are raised by defendant No.5 and 6 in their written statement. Issues to that effect are framed at Exh.27. In these circumstances, opportunity needs to be given to the plaintiff to do needful, otherwise possibility of her suffering irreparable loss cannot be ruled out.

9) No doubt, present application is moved by the plaintiff at belated stage. But, considering nature of proceeding and pleading of parties, that cannot be termed as negligence or lack of due diligence on the part of the plaintiff. Therefore, I do not find any substance in objection to that effect. Considering nature of suit, proposed amendment is must to determine real controversy between parties and to avoid multiplicity of proceedings. Furthermore, delay would not be the ground to reject the amendment application if the proposed amendment is necessary to determine the real controversy between the parties. Moreover, no prejudice will be caused to defendants if present application is came to be allowed. As far as delay in moving present application is concerned that can be compensated by imposing appropriate costs on the plaintiff. In the result following order is

passed:

ORDER

A] Application Exh. 44 is hereby allowed subject to costs of ₹ 600/-.

B] The plaintiff is allowed to amend his plaint as per application till next date.

C] If the amount of costs is deposited by the plaintiff till next date same be paid to the defendant No.5 and 6, otherwise same be included in the decree.

D] The plaintiff is hereby ordered to supply copy of amended plaint on record for the Court as well as for the defendant.

E] Costs on applicant.

Date:- 28/03/2019.

(Pankaj M. Bidada)
Civil Judge, Junior Division,
Patoda.

CERTIFICATE

I affirm that the contents of this PDF file Order / Judgment are same word to word, as per the original Order / Judgment.

This Order is typed and uploaded by Presiding Office of this Court.

Court : C.J.J.D. & J.M.F.C., Patoda.
Judgment / Order signed by the
Presiding Officer on : 28/03/2019.
Judgment / Order uploaded on : 28/03/2019.