

ORDER BELOW EXH. 115

By this application, defendants No. 2 to 12 seek permission to amend their written statement.

2] According to them, in the last month they obtained copies of some revenue record and some new facts came to their notice. They intend to bring those facts on record by amending their written statement, as mentioned in detail in this application. Proposed amendment is necessary. It would not change their defence and would not cause any prejudice to plaintiffs. They, therefore, pray to allow this application .

3] Learned Advocate for plaintiffs filed say at Exh.118 and resisted this application. According to him, present application is false and frivolous. Defendant No. 1 has admitted plaintiffs' claim. Therefore, there is no question of amending written statement by those defendants. They have no right to object mutation entries No. 196 and 262. Plaintiffs have filed 7/12 extract of Gat No. 143 at Exh.79, which shows shares of respective parties. R.C.S.No. 6/2004 filed by present defendants in the Court of Civil Judge, Senior Division, Beed is rejected on 26/04/2007. The reasons given in para Nos. 17 to 19 of that judgment show as to how proposed amendment is false and unnecessary. If proposed amendment is allowed, it would change the defence of defendants and would cause prejudice to plaintiffs. Hence, plaintiffs pray to

reject this application.

4] Following points arise for my determination and my findings thereon are as under.

Sr.No.	P O I N T S	F I N D I N G S
1]	If this application deserves to be allowed ?	In the negative.
2]	What order ?	As per final order.

REASONS

5] Heard learned Advocates for both sides. Perused record.

AS TO POINTS NO. 1 AND 2 : -

6] This is a suit for partition and separate possession. Defendants seek amendment in their written statement mainly for bringing two facts on record, viz.

- i] During amalgamation proceeding, plaintiffs illegally got recorded more area to their share.
- ii] As per mutation entries No. 196 and 262, plaintiffs have partitioned suit properties so also some other properties.

However, perusal of their written statement shows that the first fact regarding amalgamation proceeding is already contended therein. Therefore, amendment to that extent need not be allowed.

7] Though defendants No. 2 to 12 intend to bring on record that plaintiffs have already partitioned suit properties, they do not mention as to when this earlier partition took place; as to when mutation entries No. 196 and 262 are effected; as to when and how those defendants got knowledge thereof and as to when they obtained those documents. They did not even file on record copies of documents, which they claim to have recently obtained. It is not known as to when mutation entries No. 196 and 262 are effected. As such, present application is too vague and it would not be proper to allow the same.

8] It is worth mentioning that those defendants had filed application (Exh.107) for framing preliminary issue regarding limitation. During arguments thereof, learned Advocate for defendants had raised the point of earlier partition. However, application (Exh.107) came to be rejected and this order is not yet challenged. It is observed therein that the story of earlier partition is not introduced by those defendants in their written statement. Admittedly, plaintiff and defendants are from same family. Had there been partition, as claimed by defendants, they would have certainly got some properties and they ought to have knowledge of this partition. In spite of this, the question as to why they did not

contend this fact in their written statement, remains unanswered. Even earlier, those defendants have once amended their written statement and at that time also, they did not raise this contention. This shows that defendants are negligent in proceeding with the matter. It is not their case that inspite of due diligence, they were unable to raise this contention earlier and, therefore, this application can not be allowed.

9] At this stage, some other facts also need reference. As those defendants did not cross-examine plaintiffs' witnesses. "No cross" order was passed and later on, it was set aside on imposing costs on them. However, they did not pay costs and did not proceed with the matter. Thereafter, plaintiffs closed their evidence. In spite of giving sufficient opportunity, those defendants did not lead evidence and hence, their evidence is treated as closed. Their applications for permission to deposit costs and time to lead evidence (Exh.109 and 111) stood rejected. Their application (Exh.112) for review is also rejected today itself. As such, the matter is practically pending for final arguments. Obviously, amendment can not be allowed at this belated stage. Learned Advocate for plaintiffs submits that instant application is filed to give go bye to earlier orders and seek fresh opportunity to cross-examine plaintiffs' witnesses by amending written statement. This submission holds much water. It is thus clear that those defendants are not coming with clean hands and they can not be allowed to amend their written statement.

10] Learned Advocate for defendants relies on the decision of Hon'ble Bombay High Court in the case of Piedade Fernandes Vs. Charlene Leitao ([2011] O Supreme (Mah) 1207). In this case, it is observed that in allowing amendment of written statement, liberal approach is a general view when admittedly the other party can be compensated in money. Technicality of law should not be permitted to hamper the Court in the administration of justice. However, present matter is quite old. Defendants have already prolonged it. They filed various applications i.e. for amendment, for appointment of Court Commissioner, for adjournments, for setting aside "No cross" order, for review etc. This shows that liberal approach is already taken in the matter but defendants are abusing the process of law and, therefore, with all respect, it will have to be said that the ratio will not help defendants.

11] In short, proposed amendment is not worth allowed. Present application is devoid of merit. It is liable to be rejected. Hence, I answer point No. 1 in the negative and in answer to point No. 2, I pass the following order.

ORDER

- 1] Application (Exh. 115) stands rejected.
- 2] Costs in cause.

Date : 03/01/2018

Sd/-
(Anil B. Kulkarni)
Civil Judge, J.D.,
Shirur Kasar.