

Order below Exh.No.45

1] Present application has been filed by the defendant no. 1 under Order VI Rule 17 of the Code of Civil Procedure for amendment of his written statement. The defendant contended that, the present suit has been filed for partition and separate possession, but plaintiff has not included entire ancestral property in the suit. Therefore, the suit is not maintainable. There are house properties in the name of plaintiff and defendant and there is land gut no. 24 which ought to have been added in the suit as a suit property. Therefore, the suit being sans the properties is not maintainable. In fact, inadvertently the present legal defence has not been raised in written statement. Therefore, the defendant want to amend the written statement by taking the recourse of Order VI Rule 17 of Code of Civil Procedure.

2] It is contended by the defendant that, the proposed amendment is technical one and it would not change nature of the suit. He further submitted that the proposed amendment is required for just decision of the case as well as it would be helpful to the court for proper adjudication. Hence, the application be allowed.

3] Per contra, the plaintiff raised strong objection on the application by filling specific say at Exh. 48. According to the plaintiff, present application is not maintainable since it has been filed at belated stage. On the basis of rival pleading of the parties, issues have been framed and now the evidence of the plaintiff is commenced. Moreover, the plaintiff has filed his affidavit of examination-in-chief. Therefore, the application is not maintainable. It is further submitted that, the proposed amendment is illegal. Properties which are to be added in the suit are separate property of defendant no. 3. Therefore, plaintiff and defendants are not concerned with the said properties. Therefore, there is no need to add the said

properties as a suit property. So present application is liable to be rejected. It is further contended that, proposed amendment would change nature of the suit, therefore the application may kindly be rejected.

4] Heard both sides and perused all record. Before embarking upon merit of the application, it would be just and proper to see scope and ambit of Order VI Rule 17 of Code of Civil Procedure. According to Order VI Rule 17 of Code of Civil Procedure, court may at any stage of the proceeding allowed either party to alter or amend the pleading in such manner and on such terms as may be just, and all such amendment shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. So, first of all it has to be seen that whether the proposed amendment is required for determining the real question in controversy between the parties. While deciding the application it has to be kept in mind that the suit has been filed for partition and separate possession. Moreover, it is also to be taken note of that parties of the suit are governing by 'Mitakshara School' so as per Hindu Law all properties as well as all necessary parties should be added in partition suit. Thus, it is evident that the proposed amendment is necessary for proper adjudication since all properties of plaintiff and defendant should added in partition suit.

5] In this context, I have gone through ruling of Hon'ble Apex Court reported in 2015(5) MHLJ page no. 215 **Mount Merry Enterprises vs. Jivratna Medy Treat Pvt.Ltd.** Wherein it is held that amendment application under Order VI Rule 17 of Code of Civil Procedure should normally be granted unless by virtue of amendment nature of suit is change or some prejudice is caused to defendant. So far as the proposed amendment is concerned, it is evident that it would not change nature of the suit since defendant just want to add his legal defence as to on account of non joinder of all properties, the suit is liable to be dismissed. So due to the said avermentes, there is nothing any chances of changing of nature of the

suit. Moreover, it appears that the proposed amendment is not like to cause prejudice to the defendant. Thus, I do not find any ground or reason to reject the application. On the contrary, it appears that the proposed amendment is required from determining the real question in controversy between the parties.

6] Ld.advocate of the plaintiff submitted that the proposed properties which are to be added in the suit are separate property of defendant no. 3. Therefore, no need to add properties as a suit land. Heard submission of ld.advocate of the plaintiff but so far as present application is concerned the advanced argument of the plaintiff is not legal one. Because, source, title and nature of the suit property will have to be decided in trial and not in present application. Therefore, to decide the application, only it has to be seen that whether the proposed amendment is necessary for adjudication of the suit and whether the amendment would not change nature of the suit. But, as discussed hereinabove, already it is concluded that the proposed amendment is necessary and it would not change nature of the suit. Hence, the application is liable to be allowed. But while deciding the application it is to be taken note of that the defendants have filed their written statement on 23-09-14 and on the basis of plaint and written statement issues have been framed on 12-01-15. After framing of the issues plaintiff has filed his affidavit of examination-in-chief. Thereafter present application has been filed. In fact, the present application ought to have been filed before commencement of the trial. Moreover, defendants have failed to show any sufficient cause of their failure. Therefore, the defendant is liable to pay cost to the plaintiff as a compensation. Hence, I pass following order.

ORDER.

- 1] The amendment application is hereby allowed on cost of Rs.500/- (Rupees five hundred).

- 2] The defendants shall comply the order and carry out the amendment within 14 days from today.
- 3] The defendants shall supply copies of amended W.S.to the plaintiffs.

Place: Wadwani.
Date : 22-09-2015

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(Ishwar K. Suryawanshi)
Civil Judge, (J.D.) Wadwani.