

ORDER BELOW EXH.No.77

(Passed on this 27th day of February 2019)

By the application supported with an affidavit, plaintiffs have prayed for to add proposed amendment in the plaint vide Order VI Rule 17 of the Code of Civil Procedure, 1908.

2. Read the instant application and say filed thereon by defendants. Heard the learned Advocates of the respective parties. Perused the record and proceeding of the matter.

3. As per the plaintiff, the suit is filed for partition and separate possession of the suit property described in para no.1 of the plaint. The statement of possession of plaintiff's father prior to year 1970 and sale deed is not made inadvertently and therefore, plaintiff wants to incorporate proposed amendment adding para no.4A in the plaint. The proposed amendment is also required to be made in the plaint in respect of the explanation of possession. Thus, they have prayed for to add proposed amendment in the plaint for the just decision of the suit in the interest of justice.

4. On the contrary, present defendants have strongly opposed the application and denied the relief asked for under the instant application. They have contended that issue were framed and plaintiff have filed evidence on affidavit and the suit is fixed for cross-examination but, there is no due diligence shown by plaintiff in introducing the matter under proposed amendment. They contended that the proposed amendment is not a recent advancement to be allowed but it alleges to be occurred in 1956-57 and 1970 with no explanation to introduce. They have, therefore, contended that the application is not maintainable at this juncture and required to be rejected with cost.

5. Having considering the nature of instant application and hearing the parties, only point arise before me is that whether the proposed amendment under the instant application which the plaintiff wants to introduce in the plaint is necessary for the purpose of determining the real controversy in dispute between the parties to the suit.

6. In searching out the necessity of the proposed amendment for the purpose of determining the real controversy in dispute between the parties to the suit, I would like to gone through the nature of suit which is for partition and separate possession of the suit property. The plaintiffs have alleged in the plaint that on 3.04.1970 plaintiffs father namely Gangaram Yoga Dongare had purchased the land from Kashinath Yanka Hoke vide sale deed sr.no.718/1970 merely for family arrangement in the name of defendant no.1 then aged about 20 years and defendant no.2 then minor. Plaintiffs have wants to add proposed amendment incorporating the statement that in 1956-57 name of Ganga Yoga was recorded in Khasra Patrak on the basis of oral say namely Kashinath Yanka Hoke, thereafter merely on the say of Ganga Yoga Dongare, sale deed No. 1818 dated 13-04-1970 was made in the name of defendant no. 1 but at the time of oral say defendant no.1 was minor and had no source of income and Ganga Yoga paid consideration amount and thereby said property were for joint family and not for defendant no. 1. Defendants contending that proposed statement of year 1956-57 about oral sale is not substantiated with any document and thus it mere attempted to prolong the proceeding. On this objection learned Advocate for plaintiffs invites the attention of this court of Khasra Patrak filed below Exh.35. A perusal of said Khasra Patrak, it appears that there is entry of oral sale of the land made in between Ganga Yoga and Kashinath thus the matter is also supported with revenue document.

7. Considering the nature of suit which is for partition and separate possession of the suit properties and real controversy dispute between the

parties the burden casted upon plaintiffs and divided by family properties and upon defendants to prove it his self acquired property vide issue nos. 1 and 2 respectively framed below Exh.42. In view of this circumstances and the pleading of the parties the proposed amendment is plaintiffs wants to incorporate in the plaint is nothing but explanation of the source of acquisition of property by defendant no. 1. The proposed amendment is, therefore, not change the nature of suit to surprise defendants but it will made explanation in respect to sale transaction alleging the name of defendant no. 1. Thus, the proposed amendment is allowed will not change the nature of suit entirely. If it is allowed to be incorporated in the plaint it will facilitate to adjudicate the real controversy between the parties and it is required for just decision of the suit. Defendants will get every opportunity to cross examine witnesses denying the proposed amendment. Therefore, they will not prejudice with any harm which can not be compensated in terms of money.

8. In view of the matter the proposed amendment is appearing necessary for the purpose of determining the real question in between the parties in the suit. Therefore, plaintiffs have entitled to be incorporated proposed amendment in the plaint.

9. It is relevant to note here that the proposed amendment which plaintiffs incorporated in the plaint is appeared on the basis of revenue entries namely Khasra Patrak (Exh.35). Said Khasra Patrak is appeared to be in the custody of plaintiffs since the date of suit despite they never bother to introduce proposed amendment earlier in the filing of instant application and thereby allow the suit to proceed in absence of such pleading. Therefore, the proceeding of the instant suit is delaying by non incorporating the proposed amendment under instant application earlier. Therefore, while allowing the instant application heavy cost is need to be saddled on plaintiff compensating defendants for delay caused for. In the result, I pass the following order.

ORDER

- 1] The instant application (Exh.77) is hereby allowed, subject to cost of Rs. 500/- given to defendants.
- 2] Plaintiffs to carry out proposed amendment in the plaint within next 14 days by filing the amended copy on or before next date.
- 3] Parties to note.

Date : 27-02-2019.

Sd/-
[Kailash K. Chafale]
Civil Judge (Junior Division),
Wadwani.