

Reg. C.A.No. 42/2014  
(CNR MH-BU-01-000489-2014)  
Gulabrao Motiram Chinchole  
-Vrs-  
Tejrao Tukaram Pawar

**Order below Exh.14**  
(Passed on 3.7.2019)

1] This is application for amendment of plaint under Order 6 Rule 17 of the Code of Civil Procedure.

2] The application has been filed by the appellant-original plaintiff for amendment in paragraph no. 6 amending the share 1 H 40 Are instead of wrong share 90 Are.

3] Perused the application and say. Heard learned advocate Mr. N.S. Sawle for the applicant/appellant and Mr. G.v. Rangnath learned advocate for opponent/respondent.

4] Memorandum of partition was within the knowledge of the appellant prior to filing of the suit. In the suit, the share of plaintiff is shown 90 Are. In view of the pleading of plaintiff, the defendant filed written statement. The plaintiff is seeking the amendment on the basis of memorandum of partition and evidence of P.W.3 Achyutrao Motiram Chinchole. The evidence of Achyutrao Chinchole was recorded on 7.8.2003. The judgment of the trial court is dated 28.2.2014. Having the knowledge about the wrong share shown in memorandum of partition and in view of the evidence of PW-3 Achyutrao Chinchole, there was an ample opportunity to amend the plaint prior to the judgment of the trial court. No such step was taken by the plaintiff in the trial court. On the basis of the evidence of parties, the judgment was delivered. Even after filing the

appeal in 2014, no such effort was taken to amend the plaint. At the time of final hearing of the appeal, the present application has been filed. Learned advocate Mr. Sawle relied on the citation 2018(2) Mh.L.J. 276, “Bhimrao Laxman Kamble (since deceased) through his L.Rs. Sharada Bhimrao Kamble and others vs. Annaso Dhondiram Manole and another”. There is no doubt that the court can grant amendment in plaint. The amendment in C.P.C. is not applicable to the suits which were filed prior to the amendment. The plaintiff is not diligent. He has not taken steps prior to the decision of the lower court. Another question is unless there is rectification of the memorandum of partition, the oral explanation for the contents of written document, cannot be acceptable. Therefore, as the memorandum was signed by all the brothers, there is no rectification and there was no any dispute prior to filing of the suit about the wrong shares, at this stage, such type of amendment on the basis of document cannot be allowed. Hence, the order.

**Order**

Application is rejected.

Sd/-

Place : Buldana.  
Dated : 3.7.2019.

**(Mahendra K. Mahajan)**  
Principal District Judge, Buldana.

**Certificate**

I affirm that the contents of this PDF file judgment are same word to word as per original judgment

Name of Steno : V.D.Deulgaonkar.  
Name of Court : District Court, Buldana