

ORDER BELOW EXH. 112

Perused application and say filed by defendants on it. Heard learned counsels appearing for both parties at length.

02. Present application is filed by plaintiff under Order 6 Rule 17 read with section 151 of Code of Civil Procedure for amendment of plaint. It is submitted by the plaintiff that he has filed this suit for partition and separate possession of his share in suit property. While reading contents of plaint, he realized that prayer about Gut No.678 and 677 is remained to be included in the plaint. So, he has filed this application for including proposed amendment in the plaint. It is filed without any delay and it is necessary for proper adjudication of the suit. The proposed amendment does not change the nature of suit and if allowed, it will not cause any prejudice to defendants.. Hence, plaintiff prayed to allow the application.

03. The defendants No.2 and 3 have opposed the application on the ground that, the application is filed after closing of evidence by plaintiff and plaintiff has not mentioned any reason for such belated application. It is filed

to prolong the matter. Hence, they prayed to reject the application with alternative prayer of imposing costs in case of allowing the application.

04. Heard both side. Following points arise for my consideration, I have recorded my findings against each of them with the reasons thereon –

S.N.	POINTS	FINDINGS
1.	Whether the proposed amendment is necessary to be allowed ?	... In the Negative.
2.	What Order ?	... As per final order.

REASONS

05. Perused the pleading of both parties. Perused the nature of proposed amendment. By way of proposed amendment, plaintiff wants to include alternative prayer of relief of possession of 9 R land of Gut No.678 and 16 R land of Gut No.677 in the plaint. This suit is filed by plaintiff for partition and separate possession of his share in suit property. Plaintiff has adduced evidence in this case on his behalf and his evidence is closed on 7.1.2016. Since then, suit is

pending for evidence of defendants. Previously, plaintiff has carried out amendment in the plaint vide Exh.59 on 18.10.2012 and it was allowed. At that time, plaintiff has not prayed for proposed amendment. Now, evidence of plaintiff is closed and evidence of defendants is continued. Plaintiff has not mentioned any sufficient cause in the application about such delayed amendment. He has not shown his due diligence about not carrying out proposed amendment before commencement of trial. The nature of proposed amendment is not subsequent event and plaintiff has not shown that in spite of due diligence, he could not bring proposed amendment before commencement of trial.

06. Moreso, from the nature of proposed amendment, it appears that due to it, there will be change in the nature of suit as plaintiff is praying for possession of land in two Gut numbers. If proposed amendment is allowed, it will cause prejudice to defendants as they have filed their written statements on record and trial is also commenced. The proposed amendment is not necessary to adjudicate the controversy between the parties. For all these reasons, the application being devoid of merits, it is liable to be rejected. Hence, I pass the following order:

ORDER

1. Application is hereby rejected.
2. Costs in main cause.

Sd/-

(S.C.Sarani)

Civil Judge (Jr. Dn.)
Deulgaon Raja.

Date :- 22/12/2016.

I affirm that the contents of this PDF file order are correct word to word as per the original order.

Name of Court: S.C.Sarani, Civil Judge (J.D.), Deulgaon Raja.

Name of Steno: S.T.Bedi.

Date: 22.12.2016.