

ORDER BELOW EXHIBIT - 34.

1. Read the application and say filed by opponent No.1 vide exhibit 35. Also perused the say filed by opponent No.2. Gone through record. Heard Ld. Adv. Shri. Bardapurkar appearing for disputant and Ld. Adv. Shri. K. J. Suryawanshi and Shri. M. R. Choudhary appearing for opponent No.1 & 2 respectively.

2. By filing present application the disputant is seeking amendment to the dispute by replacing some new portion in place of existing portion in para no.2 of the dispute. Further the disputant is seeking to substitute name of eastern side holder of property i.e. suit plot No.9. In this application it is contended that, the proposed amendment sought by disputant is necessary for proper adjudication of the dispute. It is further contended that proposed amendment as sought by disputant if allowed then it will not change the nature of dispute. Accordingly disputant has prayed for permitting him to amend the dispute in the manner as prayed by him in the application.

3. The opponent No.1 by filing her say at exhibit 35 has replied the present application. She contended that contents of applications are false. She further contended that, disputant had filed another application for amendment at exhibit 26 which was allowed by this court and again present application has been filed to fill up the lacuna which can not be permitted. She further contended that the proposed amendment it allowed it will change the nature of dispute and it will cost great prejudice to opponent. Accordingly the opponent No.1 has

prayed to reject the application.

4. The opponent No.2 also registered this application by filing its say. It is contended that, the present application has been filed after commencement of trial and therefore same can not be allowed. Accordingly the opponent No.2 also prayed to reject the application.

5. While considering the prayer for amendment the court has to consider three different aspect that is whether the amendment as sought by party if allowed, will change the nature of dispute and whether the proposed amendment is necessary for determining the real question in contradictory between the parties and whether the amendment will cause any loss or hardship to the party against whom the amendment is moved.

6. The argument of Advocate for disputant is that the proposed amendment as sought by disputant if allowed then it will not change the existing the nature of dispute. His further argument is that the trial of present dispute is yet to commence and therefore there is no hurdle in considering the present application. On the contrary the argument of Ld. Adv. Appearing for opponent is that this is the second application for amendment moved by disputant. It is submitted that, prior to this one application was filed by disputant for amendment of the dispute and same has been allowed by this court. It is submitted that, the present application has been filed by disputant after the trial of the case has been commenced and there was no due diligence on the part of disputant in filing the present application. It is further submitted that, the delay in filing present application has not been properly explained by disputant. With this submission respective learned advocate for opponents have strongly objected for

allowing this application.

7. Admittedly in the instant case the necessary issues are framed by this court on 18.6.2012. The record of this case will show that the issues though are framed by this court still the parties have not led their respective oral evidence in support of their case. Thus it will appear that the trial of present dispute is yet to be commenced. The another aspect of the matter is that, the disputant by seeking amendment though has tried to amend the dispute, however, the amendment sought does not appear to be substantial in nature. The proposed amendment appears to be clarificatory in nature. The proposed amendment if allowed then in my opinion it will not change the existing nature of dispute nor it will cause any hardship or prejudice to the opponents. Furthermore the proposed amendment as sought by disputant if taken into account then in my view same is necessary to be allowed because that will determine real controversy in dispute between the parties. Moreover, the proposed amendment if allowed then it will clarify the existing location of the suit property i.e. plot No.9.

8. It is true that, another application filed by disputant seeking amendment to the dispute was allowed by this court and necessary amendment has been carried out to the dispute. However in my view there is as such no legal bar in filing subsequent application for amendment of the pleading, if situation warrants so. It is true that there is delay occurred on the part of disputant in filing the present application. However now it is well settled legal position that mere delay in applying for amendment can not be the ground to refuse the prayer for amendment. At the final the dispute will have to be decided on merits by giving sufficient opportunity to both the parties to place their respective case before court for adjudication. On account of delay if there is possibility of suffering any

inconvenience by opponent then that can be considered by awarding reasonable cost to them from disputant. In the aforesaid circumstance in my view the present application if allowed by court then it will not change the existing nature of dispute nor it will cause any hardship to opponents. In the result I have no hesitation in allowing the present application. Accordingly the present application is allowed and the disputant is directed to carry out the necessary amendment within period of one week from today. The disputant however is directed to pay cost of Rs.300/- each to opponent No.1 & 2 within one week from today and after payment of the cost only he to carry out the necessary amendment. The disputant is further directed to file on record the amended dispute.

Sd/-

Place :- Aurangabad.

(U. M. Kulkarni)

Judge,

Date :- 30th June, 2014.

Co-operative Court, Aurangabad.