

Order below Exh. 110

1] Plaintiffs have filed present application under Order VI, Rule 17 of the Code of Civil Procedure, 1908 for amendment in the plaint.

2] Read the application and say given by defendants.

3] The present suit instituted for partition, possession, declaration and perpetual injunction against defendants. Plaintiffs contended that recently they have got old revenue record regarding the mutation entry No. 1610 in the suit. They came to know that vide order No. जमीन १९९, दिनांक १०/०२/१९७५ the suit property could not mortgage, sale and transfer prior to permission of the Collector, Dhule by the heirs of the person as per conditions mentioned therein. Plaintiffs have challenged the M.E. No. 1610 on the ground that transfer of the suit property by late Narsing Laxman Bhil has made on the name of defendant No. 1 without the permission of Collector, Dhule. Therefore, the said transaction vide M.E.No. 1610 is illegal. Therefore, plaintiffs want to add proposed amendment vide Para No. 8 (b) after the para 8 (a) of the plaint as mentioned in the application. The proposed amendment is necessary to decide the suit on merit. It will not cause prejudice to defendants. On the contrary, the permission is not given it will create multiplicity of proceeding and cause prejudice to the plaintiff. Therefore, they have requested to allow the application.

4] Defendants have opposed the application. They have denied the contentions in the application. They have submitted that previously plaintiffs amended the suit vide para 8 (a) of the plaint. Plaintiffs could have made the proposed amendment at the time of previous amendment. Moreover, the contents of the proposed amendment are already mentioned in the previous amendment. Therefore, there is no need to grant the proposed amendment. Defendants filed this application only to protract the hearing of the suit. they requested to reject the application.

5] Upon such hearing of both the sides and perusal of record, it reveals that plaintiffs are seeking amendment after para

No.8(a) of the plaint as mentioned in the application. According to them they recently got the relevant document regarding M.E.No. 1610 and consequently they came to know that the transfer has been made by late Narsing Laxman Bhil to defendant No.1 without prior permission of Collector, Dhule. Therefore, the said transaction is illegal and therefore, it is relevant to decide the suit on merit. So far as objection raised by defendants are concerned, I have gone through the previous amendment vide application Exh.89. However, no such contentions are mentioned in the proposed amendment application. No doubt, those contentions are regarding the illegal transfer of the suit property by M.E.No. 1610. However, plaintiffs got its relevant document i.e. Order No. जमीन १९९, दिनांक १०/०२/१९७५. Plaintiffs got knowledge about the same after receiving the said documents. Therefore, it would not bar plaintiffs for making proposed amendment. Hence, there is no force in the objection raised by defendants.

6] Considering the nature of the suit, the proposed amendment is necessary to decide real question in controversy between the parties. Moreover, it would help to decide the suit on merit. The proposed amendment would not be changed the nature of the suit. At the same time, it would not cause prejudice to defendants. The proposed amendment is based on the legal aspect of the Maharashtra Land Revenue Code which is required to be taken into consideration at the time of final adjudication of the suit. Therefore, the proposed amendment is necessary to determine the real controversy between the parties.

7] However, the record shows that plaintiffs have had an opportunity to make the proposed amendment previously. In this regard, defendants contended that plaintiffs have filed the present application only to prolong the hearing of the suit. However, record nowhere shows that the present application moved only to protract the hearing of the suit. Plaintiffs themselves admitted that inadvertently they failed to plead according to the proposed amendment in the suit. The fault on the part of plaintiffs could be justified by imposing reasonable cost upon them. However, there right under Order XVII, Rule 6 could not be denied to permit them for the proposed amendment. In view of aforesaid discussion, I am of the view that the proposed amendment is necessary to decide the real controversy between the parties. In the circumstances, the application is liable to be allowed. Therefore, the following order is passed.

ORDER

- 1] The application is allowed subject to payment of cost of Rs.500/-.
- 2] Plaintiffs are permitted to add the contents in para No. 4 of this application shown as the proposed amendment in their pleading after para No. 8(a) as 8(b).
- 3] Plaintiffs shall carry out the said amendment on or before next date and submit the copy of amended plaint on record accordingly.
- 5] Both parties to take note.

Dondaicha.
Date :- 25/09/2017.

Sd/-
(A. J. Girhe)
Jt. Civil Judge, J.D.,Dondaicha.