

ORDER BELOW EXHIBIT 63

This is an application by the plaintiffs seeking amendment as per Order VI Rule 17 of the Code of Civil Procedure.

02. It is the case of the plaintiffs that they have filed suit for partition and separate possession in respect of ancestral properties however, due to lack of knowledge, illiteracy of the plaintiffs and unavailability of the necessary property documents, the other joint family properties are left to be included in the present suit. Hence, the plaintiffs need to amend their plaint by adding the joint family properties in the suit making it subject matter of the suit. The plaintiffs further state that the proposed amendments would not change the nature of the suit and the same are necessary in order to decide the suit on merit. Hence, they prayed to allow them to amend their plaint in the following manners:

i. मूळ दावा कलम ३-अ दाव्यातील विद्यमान मालमत्तांच्या तपशीलनंतर खालील शब्द समाविष्ट करणेयत यावेत.

“तसेच खालील मालमत्ता देखील सदर एकत्र कुटूंबाच्या सामाईक मालकीच्या व एकत्र कुटूंबाच्या मिळकतींच्या उत्पन्नातून घेतलेल्या आहेत व त्यांचाही वादीस विभाजनाचा कायदेशीर हक्क आहे”.

अ. क्र.	गावाचे नाव	गट नंबर	क्षेत्र हे. आर	आकार रु. पैसे	कोणाचे नाव आहे
१.	विखरण बुद्रुक	१६५/२/अ	००-७१	०५-००	बुधा हिरामण पवार
२.	विखरण बुद्रुक	१६५/१/अ	००-८२	०३-७५	बुधा हिरामण पवार
३.	विखरण बुद्रुक	६	०१-४०	०४-२५	क्रांतीकुमार बुधा पवार
४.	विखरण बुद्रुक	१८४/१/अ	००-९१	०५-५५	क्रांतीकुमार बुधा पवार

५.	विखरण बुद्रुक	५	००-६६	०२-७५	क्रांतीकुमार बुधा पवार
६.	विखरण बुद्रुक	१८५/१/ अ/२/ब	००-६९	०५-१५	कुसूमबाई बुधा पवार
७.	टेकवाडे	२०८/१	००-८२	०५-००	कल्पना क्रांतीकुमार पवार
८.	टेकवाडे	२१५/१/ब	००-५५	०४-३५	मायाबाई बुधा पवार
९.	टेकवाडे	२१५/२/क	०१-२०	०९-७०	कोमलसिंग बुधा पवार

ii. दावा कलम १० चे प्रार्थना कलमात १०-अ मध्ये शेवटी खालील शब्द समाविष्ट करण्यात यावेत.

“सदर नवीन नमूद केलेल्या वरील मालमत्ता देखील विभाजनात समावेश करून योग्य हिश्याने वाटप करून वादी नं. १ व २ यांना देण्यात यावे.”

४) यावरील मिळकती वादी नं. १ व २ तसेच प्रतिवादी यांच्या एकत्र कुटुंबाच्या सामाईक मिळकती असून त्यामध्ये वादींचा सुध्दा कायद्याने अविभक्त हिस्सा आहे. आजपावेतो सदर उपरोक्त मिळकतींची सरस-निरस मानाने वाटप झालेले नाही. वादींच्या हिस्सा डावलून प्रतिवादींनी संगनमताने त्यांचे नाव शेत मिळकती केलेल्या आहेत म्हणून सदर मिळकती दाव्यात समाविष्ट होणे जरूरी व आवश्यक आहे.

५) मयत प्रतिवादी नं. १ बुधा हिरामण पवार हा कुटुंबातील सुशिक्षित व राजकारणी कर्ता पुरुष असल्यामुळे वादींनी त्यांचेवर विश्वास ठेऊन या मिळकतींमध्ये आजपावेतो हिस्सा वाटणी मागितली नव्हती व नाही. याबाबत वादी नं. १ व २ यांनी दावा कलम ५ मध्ये याबाबत नमूद केले आहे की,

iii. “दावा कलम ३ मधील परिशिष्ट-अ शेत मिळकती १ ते ११ तसेच परिशिष्ट-ब १ ते १२ या मिळकतीशिवाय वादी व प्रतिवादी यांच्या एकत्र हिंदू कुटुंबाच्या मालकीच्या मिळकती याची वादीला माहिती नाही पुढे माहिती

मिळाल्यास अथवा प्रतिवादीने खुलासा केल्यास त्या जंगम स्थावर मिळकती या दाव्यात समाविष्ट करण्याची मुभा व परवानगी वादींना असावी. त्या मिळकतीमधील वादींच्या हिश्याचे किंमतीवर योग्य तो जादा कोर्ट फी स्टॅम्प देण्यास वा दी तयार आहे” .

iv. १५) वादीचा दावा वाटणीसाठी असल्याने सदर दुरुस्ती करण्यात आलेल्या एकत्र कुटूंबाच्या शेत मिळकती १ ते ९ साठी महसूल आकारणीवर एकूण आकार रक्कम रु.४५.५० पैसे यावर २०० पट म्हणजे रु.९,१००/- यावर केलेली असून यातील वादींचा होणारा हिस्सा १/७ यावर रु.१,३००/- कोर्ट फी स्टॅम्प रु.२३६/- चा लावणसोत आलेला आहे परंतु वादी ही स्त्री असलेने व कौटुंबिक वादामुळे वा दीस कोर्ट फी स्टॅम्प माफ आहे.

03. Defendants filed their say detailed say vide Exh.67 and resisted it, stating that the present application is not tenable in the eyes of law. The contents of it are false and fabricated. The reasons assigned for are not correct. The plaintiff have no reason to file this application. The proposed amendments would change the nature of the suit hence, can not be allowed. The present suit was filed five years ago without making proposed properties subject matter of the suit. In the written statment vide Exh.21, the defendants had clearly stated that all the ancestral and joint family properties have not been brought under the common hotchpotch hence, the suit is not tenable. The issues have been framed regarding common hotchpotch. Thereafter, the plaintiff has led their evidence and witness has been cross examined by the defendants thoroughly. Till then the plaintiffs did not bother the carry out amendments in their pleading. Now after having

fear of losing the suit, present application has been filed to fill the lacunas in the plaintiffs' case. The amendments could not be allowed after the cross examination of the plaintiffs' witness. Hence, they prayed to reject the application.

04. Perused the record. Heard the arguments advanced by learned advocate for the plaintiffs and defendants. Following points arise for determination and my findings thereon and reasons thereof are as follows:

<u>Points</u>	<u>Findings</u>
1. Whether the plaintiffs satisfy that the proposed amendments are necessary for determining the real question in controversy between the parties?	Yes.
2. What order?	The application is allowed.

R-E-A-S-O-N-S

AS TO POINT NO.1:

05. The Plaintiffs in the present application have prayed for amendment in his pleading as per Order VI Rule 17 of the Code of Civil Procedure. Order VI Rule 17 of the Code of Civil Procedure enumerates the circumstances under which the Court may allow either parties to amend their pleadings. The relevant provision of the Code of Civil Procedure is reproduced below:

*Order VI Rule 17: Amendment of pleadings.- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be **necessary for the purpose of determining the real questions in controversy between the parties** :*

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

06. At the outset, it would not be out of milieu to refer here that the trail of the present suit has commenced. On this background, in order to amend the pleadings as to include other properties which could be the subject matter of partition will have to satisfy this court the proposed amendments are necessary for determining the real question of controversy between the parties.

07. The present suit is filed for partition and separate possession. Herein, the plaintiffs claim their share in the suit lands. Therefore, considering the nature of suit, it would be necessary for the plaintiff to add all the properties under common hotch-potch, if it were mistakenly left to be added in the pleading. If the plaintiff are not allowed to amend their pleading, it would be difficult to determine the real question of controversy between the parties at time of trial. Therefore, it would be just and proper to allow the plaintiffs to amend their pleading.

08. It is necessary to note that due to insertion of other properties for partition, it would be possible for the parties to claim

their share in all the properties. Hence, the proposed amendments are necessary in order to determine the real controversy between the parties. Resultant, I answer Point No.1 in the affirmative.

AS TO POINT NO.2:

09. Considering the nature of proposed amendments and the above facts & circumstances of the case, no prejudice would be caused to defendants. Moreover, adding the other properties in the plaint and seeking its partition would not change the nature of the suit. It is to be noted here that, the plaintiffs moved the present application after considerable delay from filing written statement of the defendants. The reasons assigned by the plaintiffs for delay are also justifiable as both the plaintiff are old aged seem to illiterate women who can not be expected to have knowledge of the legal proceeding and having possession of properties' document. Therefore, it would be just and proper to impose some costs on them to compensate the defendants. Based on the above aspects, the following order is passed:

ORDER

- 1.** The application at **Exh.63** is allowed subject to cost of **Rs.2,000/- (Rupees Two Thousand Only)** to be paid by the plaintiffs collectively to the defendants collectively.
- 2.** The plaintiffs are directed to carry out the amendments in the pleading within 14 days, failing which the application shall stand rejected.

3. The plaintiffs are directed to supply copy of the amended pleading within 14 days after carrying out the amendment.

4. The defendant shall present additional written statement about the amendments so carried out, if any and if required, within 14 days from the receipt of the amended copy by them.

Shirpur.
Date :- 17.11.2025

(Husna R. Khan)
Jt. Civil Judge J. D., Shirpur