

**Order Below Exh.28**  
**(Dated : 16.02.2022)**

This is an application filed by plaintiffs for amendment of plaint vide Order VI Rule 17 of the Code of Civil Procedure, 1908 (*for the sake of brevity hereinafter referred as C.P.C.*).

2. It is contended in the application that the plaintiffs have filed present suit for partition and separate possession. They further contended that inadvertently and by mistake the name of defendant no.5 has been wrongly written as Guddu Goma Shende instead of Pradip Goma Meshram due to which suit summons did not serve on defendant no.5. Therefore, plaintiffs want to amend their plaint as per proposed pleading.

3. On the other hand, the defendants have not filed their say on present application. Therefore, present application is decided without the say of defendants.

4. I have perused the application. I also perused the plaint alongwith all relevant documents filed on record.

5. I have heard Shri. U. S. Meshram the learned advocate for the plaintiffs.

6. Considering the submissions as well as contentions of plaintiffs, following points arise for determination of the application and I have recorded my findings to them with reasons as follows:-

<b><u>Sr. No.</u></b>	<b><u>Points For Determination</u></b>	<b><u>Findings</u></b>
1)	Whether proposed amendment is necessary, just, proper and reasonable in the fact and circumstances of the case?	In the affirmative

- |    |  |                         |
|----|--|-------------------------|
| 2) | Whether proposed amendment if allowed will change the nature of the suit?            | In the negative         |
| 3) | Whether proposed amendment if allowed would result in inclusive new cause of action? | In the negative         |
| 4) | Whether proposed amendment is intending to prejudice the other side ?                | In the negative         |
| 5) | What order ?   | Application is allowed. |

### **REASONS**

#### **As to Point No. 1 to 5 :-**

7. All the above points are interlinked to each other therefore for avoiding repetition they are discussed together.

8. Basically, present suit is filed for partition and separate possession. It is true that plaintiffs have shown due diligence in introducing the proposed amendment. It can not be ignored that the proposed amendment in present fact and circumstances is formal in nature and it definitely does not change the nature of the suit nor it introduces new cause of action. Rather the proposed amendment is appearing necessary and just to resolving the dispute in the present matter.

9. I have placed reliance on the judgment given by Hon'ble Supreme Court of India in the case of **Peethani Suryanarayana & Another Vs. Repaka Venkata Ramana Kishore and Others, AIR 2009 SC 2141** wherein Hon'ble Supreme Court has observed that -

*"It is true that the plaintiff-appellant ought to have been diligent in promptly seeking the amendment in the plaint at an early stage of the suit, more so when the error on the part of the plaintiff was pointed out by the defendant in the written statement itself. Still*

*we are of the opinion that the proposed amendment was necessary for the purpose of bringing to the fore the real question in controversy between the parties and the refusal to permit the amendment would create needless complications at the stage of execution in the event of the plaintiff-appellant succeeding in the suit "*

**10.** In case of **Baldev Singh and Others Vs. Manohar Singh and Another, 2006 (3) Bom C J 185 = 2006 (5) Mh.L.J 634 SC** Hon'ble Supreme Court held that it is well settled that court should be extremely liberal in granting prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to other side.

**11.** In case of **B.K.N. Pillai Vs. Pillai and Another, AIR 2000 SC 614** the Hon'ble Supreme Court held that application for amendment cannot be rejected merely on ground of prolonged delay in filing, especially when other party can be compensated by cost.

*(Emphasis supplied)*

**12.** It is well settled by a Catina of decisions of Hon'ble High courts and Supreme Court that allowing and rejecting an application for amendment of plaint is really the discretion of the court and the amendment of the plaint also should not be refused on technical grounds.

**13.** On going through the application for amendment in the light of averment in plaint and argument canvased before me, it is seen that the amendment sought is bonafide. This court is satisfied that proposed amendment is necessary for the purpose of determining the real question in controversy between the parties and for the fair adjudication of trial. No prejudice would be caused to defendants. Also, no objection raised by the defendants. This court is convinced that, the amendment sought will not change the nature

of suit. It is not the case that, the pleadings were intentionally shielded from this court. The plaintiffs are just seeking permission to amend and rectify the name of defendant no.5. The nature of amendment is formal one, in my view it will not cause any kind of prejudice to the defendants if proposed amendment is allowed. Present application is filed at earlier stage therefore, there is no question of imposition of any cost.

**14.** In view of above discussion I answered point no.1 in the affirmative and point no.2 to 4 in the negative and in result I proceed to pass following order.

**ORDER**

- 1) The application filed at Exh.28 is allowed.
- 2) The plaintiffs are allowed to amend their plaint within 14 days from the date of this order.
- 3) The plaintiffs are directed to file amended copy of the plaint on record without fail within 14 days from the date of this order.

(Dictated and pronounced in open court).

Date : 16.02.2022

( Vikram A. Avhad )  
Civil Judge Jr. Dn., Sadak Arjuni.