

R.C.S. No. 12/2018
Sanjay+1 vs Rajkumar+16

Order Below Exh. 50
(Dated : 17.08.2022)

This is an application filed by plaintiff no.1 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, separate possession and declaration. Plaintiff no.1 further contended that plaintiff no.2 Kamlabai @ Kasabai Hari Wasnik expired on 18.09.2021 at Jambhali Sadak, Tah. Sakoli, District Bhandara due to old age. Therefore, it is necessary to delete the name of plaintiff no.2 in the title clause of plaint. Plaintiff no.1 is only legal heir of the deceased plaintiff no.2 therefore, necessary heir is already in the plaint. Therefore, plaintiff no.1 wants to amend his plaint as per proposed pleading.

3. On the other hand, the defendant no.16 and 17 filed their say at Exh.51 and objected to carry out proposed amendment. Learned advocate for defendant no.16 and 17 submitted that they have already described in their written statement about the relation of plaintiff no.1 and deceased plaintiff no.2. That description should be taken into consideration. Therefore, they prayed that present application may kindly be rejected.

4. I have perused the application, say filed on it by defendants. I also perused the plaint alongwith all relevant documents filed on record.

5. I have heard Shri. M. C. Pogale the learned advocate for the plaintiff no.1 and Shri. V. W. Gupta the learned advocate for the defendant no.16 and 17.

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

<u>Sr. No.</u>	<u>Points For Determination</u>	<u>Findings</u>
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, separate possession and declaration. It is true that plaintiff no.1 has 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 arguments canvassed 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, objections raised by the defendants are formal in nature, which can be dealt while conducting trial. 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 nature of amendment 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. 50 is allowed.
- 2)** The plaintiff no.1 is allowed to amend his plaint within 14 days from the date of this order.
- 3)** The plaintiff no.1 is 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 : 17.08.2022

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

मी प्रमाणीत करतो की, या पीडीएफ फाईलमधील मजकुर व मुळ न्यायनिर्णय मधील मजकुर हा एकसारखाच आहे.

लघुलेखकाचे नाव : वि. न. दमाहे
कोर्टाचे नाव : डॉ. वि. अं. आव्हाड,
दिवाणी न्यायाधीश क. स्तर
व प्रथम वर्ग न्यायदंडाधिकारी, सडक अर्जुनी

न्यायनिर्णय/आदेश दिनांक : १७.०८.२०२२
पिठासीन अधिकारी यांनी सही केलेली तारीख : १७.०८.२०२२
न्यायनिर्णय/आदेश अपलोड केलेली तारीख : १८.०८.२०२२