

MHKO070007762021



Order below Exh. 77 in RCS No. 129/2021

Bebitai Bapu Patil & ano. Vs. Suvarna Raygonda Almane & oth.

This is an application under Order VI Rule 17 of Civil Procedure Code by plaintiffs for carrying amendment in the plaint. According to plaintiff, due to oversight, some of there were some typographical mistakes in occupation of plaintiff No. 1 and dates mentioned in the paragraph No. 2. Also paragraph No. 5-A is required to be added, which is elaborative in nature. Although those amendments are formal in nature, yet those are necessary. Hence this application.

02- Defendant Nos. 3 to 12 filed detail say at Exh. 83, and defendant Nos. 15 to 17 filed detail say at Exh. 82. It is their contention that plaintiffs have filed this suit by suppressing material facts, and when these defendants filed their respective written statements, the ulterior motive of plaintiffs is exposed, and therefore to cover it up and prolong the matter, this application is moved by plaintiffs. By virtue of proposed amendment, plaintiffs are trying to bring on record such propositions which are going to extinguish the rights in the suit property acquired by defendants. Accordingly they have raised strong objection, and requested for rejecting the application with costs.

03- Heard learned Advocate Shri R.R.Magdum for plaintiffs, learned Advocate Shri C.S.Killedar for defendant Nos. 3 to 12, learned Advocate Shri S.J.Chougule for defendant Nos. 13 and 14, and learned Advocate Shri A.M.Kulkarni for defendant Nos. 15 to 17. Also gone through record and proceeding.

04- At the outset it is necessary to mention that issues are not framed in the suit, and as such strict rigour of provisions of Order VI Rule 17 of Civil Procedure Code is not applicable at this juncture.

05- The suit is for partition of joint family properties, declaration and perpetual injunction. Some of the proposed amendments are typographical and formal in nature and those are not going to cause any prejudice to defendants. However, the main contest appears to the proposed amendment vide paragraph No. 5-A. Therefore emphasis is needed only to that extent.

06- By way of said proposition, plaintiffs are intending to plead that the mutation in respect of suit property is illegal, and sale deed executed in favour of defendant No. 13 is also illegal. It is contention of defendants that said amendment is proposed by plaintiffs after defendants have filed written statements and brought vital information on record. On this backdrop, it is seen that defendant Nos. 3 to 12 filed written statement on 08.09.2021, defendant Nos. 13 to 17 have filed it on 18.09.2021, whereas this application is also moved on 18.09.2021. Therefore, there is substance in said contention of defendant Nos. 3 to 12 only. However, there is absolutely no embargo to carry out amendment in the plaint after filing of written statement by defendants. The only rigor provided by Order VI Rule 17 of Code of Civil Procedure is that the amendment cannot be easily allowed if the suit is posted for trial. Therefore, eventhough said version of defendants is based on facts, the same cannot be accepted to deny the cause to plaintiffs.

07- It is further contention of defendant Nos. 3 to 12 that by virtue of proposed amendment, plaintiffs are trying to bring on record such propositions which are going to extinguish the rights in the suit property acquired by defendants. Come what may, plaintiffs cannot be denied to amend the pleading only because proposed amendment will

extinguish rights of defendants, particularly when proposed amendment is not going to change the nature of suit as well as it is sought before trial has commenced.

08- Since the suit is for partition of joint family properties, declaration and perpetual injunction, it is but obvious that only after bringing on record some of the facts by some of the parties by virtue of pleadings, written statements or addition / alteration of pleadings, the real controversy between the parties will churn out and then only issues can be framed to that effect.

09- Therefore, in the given set of circumstances and for reasons discussed above, I am of the view that proposed amendments are not going to change the nature of suit, it is not irrelevant or unnecessary towards the reliefs claimed in the suit, it is necessary to determine real controversy involved in the dispute, and since the trial has not commenced till date, the application deserves to be allowed. Accordingly following order.

ORDER

- 1- Application is allowed.
- 2- Plaintiffs are directed to carry out suitable amendment in plaint on or before next date.

Date : 23.12.2021
Place : Jaysingpur

Sd/-
(**Anand D. Karbhajan**)
Jt. Civil Judge (Junior Division),
Jaysingpur, Tq. Shirol, Dist. Kolhapur