

MHKO070007762021



**Order below Exh. 88 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 year mentioned in the paragraph No. 4. Also paragraph No. 3-A is required to be added, which is elaborative in nature. Although those amendments are formal in nature, those are necessary. Hence this application.

02- Defendant Nos. 3 to 12 filed detail say at Exh. 91, and defendant Nos. 15 to 17 filed detail say at Exh. 99, and defendant No. 13 filed detail say at Exh. 100. 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. Plaintiffs have moved another similar sort of application at Exh. 77, which is having same grounds and another sort of addition of pleading, and the same is also pending for hearing. Thus, it is clear that by virtue of amendment of pleadings, plaintiffs are time and again bringing new facts on record, which is not permissible in the eyes of law. 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. Two 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. 3-A. Therefore, emphasis is needed only to that extent.

06- By way of proposed paragraph No. 3-A, plaintiffs are intending to plead that the there was another ancestral properties of the parties and out of the income derived from that land suit property was purchased, and as such the suit property was never the sole property of Karta of the family, i.e. 'Kallappa Waliwade'.

07- 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 25.10.2021. Therefore, there is substance

in said contention of all these defendants. It is also the contention of defendants that another similar sort of application at Exh. 77 is filed by plaintiffs by bringing new facts on record. The same is also true as that application is also taken up for hearing simultaneously. 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.

08- 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.

09- 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.

10- 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.

11- It will not be out of place to mention that another application at Exh. 77 is also allowed by separate order. Pursuant thereto, it will be apt to issue suitable directions to plaintiffs. Accordingly following order.

**ORDER**

- 1- Application is allowed.
- 2- Plaintiffs are directed to carry out suitable amendment in plaint on or before next date.
- 3- After carrying out suitable amendments in plaint by virtue of order on Exh. 77 and this application, plaintiffs are further directed to file amended plaint within 15 days.

Date : 23.12.2021  
Place : Jaysingpur

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