

MHKO070008222015



ORDER PASSED BELOW EXH. 77

1] This application is filed by plaintiff under Order 6 Rule 17 r/w. O.1 R.10 of Code of Civil Procedure, seeking permission to carry out certain amendment in the plaint as well as for addition of parties. According to plaintiff, defendant in his written statement has taken objection about non-joinder of necessary parties as well as non inclusion of entire ancestral property in the suit. However, defendant had not given details about said property and so far as parties are concerned name of those parties were not appearing in property card. Therefore, after filing of Written Statement plaintiff did not take any action on the basis of contention raised in Written Statement. However, after cross examination of plaintiff, it has come to the notice of plaintiff that, legal heirs of Kunchabai and Champabai are to be taken on record, so also property from C.T.S.No. 497 and property No. 906 are to be included in this suit as a suit property. So also in relation to said contention some other consequential relief are also wants to insert in the plaint. Hence, this application.

2] Defendant filed his say and opposed to allow this application contending that, said contention were raised by defendant by filing their Written Statement on 11/1/2016. Plaintiff kept silence or period of four years and thus present application is filed at belated stage. Said application is filed with sole intention to cause delay in this matter. With this contentions, defendant has prayed to reject this application.

3] Considering rival contention of both parties, following points arose for my determination and I have recorded my findings thereon alongwith details reasons to follow -

| Sr. No. | POINTS | FINDINGS |
|----------------|--|--------------------------------|
| 1. | Whether proposed amendment is necessary for determining the real question in controversy between the parties ? | --- In the Affirmative. |
| 2. | What order ? | --- As per final order. |

REASONS

4] Heard both side and gone through record. Admittedly this is a part-heard matter. Evidence of plaintiff is in progress. As per Order 6 Rule 17 of C.P.C., the court may at any stage of 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

just, and all such amendments shall be made as may be necessary for the purposes of determining the real question in controversy between the parties. However, as per proviso given to said section, application for amendment shall not be allowed after the trial has commenced, unless the court comes to conclusion that, inspite of due diligence, the party could not raised the matter before the commencement of trial.

5] The case at hand is covered by proviso to the extent of commencement of trial. Now it is to be seen whether inspite of due diligence plaintiff could not raise the matter before commencement of trial. According to plaintiff, defendants had not given details about the property in his Written Statement and that position is clarified in cross examination of plaintiff. On the other hand learned advocate for defendant has argued that, plaintiff is trying to fill up the lacuna and prayed to reject this application. In suit for partition entire ancestral or joint family properties are to be included as well as all the persons who is having interest in said property are to be made party to the suit. It is not the contention of defendant that, proposed parties or properties are irrelevant to said proceeding. It is their contention that, there is delay in carrying out amendment. Infact defendants in their written statement have raised said objection. In such circumstances in order to decide suit on merit opportunity needs to be given to plaintiff to plead his case and insert all persons as a defendant, who are necessary party to this

proceeding. Certainly, defendants will get opportunity to file Written statement to the extent of amended portion in the plaint and they will get opportunity to take cross examination on this point. It is true, there is some delay in filing of this application however, on that ground alone application can not be rejected. In suit for partition, non-joinder of necessary parties or non inclusion of entire property is ground for dismissal of suit. Therefore, permission is to be granted to plaintiff to carry out amendment as prayed by imposing some costs on account of delay. Therefore, point No.1 is answered in the affirmative and in point No.2, I proceed to pass following order.

ORDER

1. Application is allowed, subject to cost of Rs. 1,000/- (Rs. One thousand only) payable by plaintiff to the defendant on or before next date.
2. Plaintiff shall pay the cost amount and carry out necessary amendment in the plaint on or next date.

Sd/-

(K.G. Sawant)

Civil Judge Senior Division,
Jaysingpur.

Date : 16/03/2021.