



ORDER BELOW EXH.35 IN SPECIAL CIVIL SUIT NO.65/2024.

Shri.Pravinsingh Ishwara Mane.

V/s.

Smt.Indumati Ishwara Mane etc.

Plaintiff has moved the present application for amendment of plaint by taking recourse to Order 6 Rule 17 read with section 151 of Code of Civil Procedure, 1908 contending therein that due to inadvertence, the locker bearing No.49758536773 standing on the name of Ishwara Bapu Mane in bank of defendant No.4 is remained to be mentioned in the plaint. According to plaintiff, recently he became aware that said locker stood on the name of Ishwara Bapu Mane and so by way of proposed amendment plaintiff wants to addition of the said locker in his pleading.

2. Application is strongly opposed by defendant No.1 and 2 by filing say below Exh.54 contending therein that, previously plaintiff has filed the civil suit in C.J.J.D. Court bearing No.107/2024, in which there is no mention about any locker and he has not given any evidence to that effect. Further, there is no documentary evidence in support of proposed amendment and by way of above said proposed amendment, plaintiff wants to made the fishing inquiry and so requested for rejection of the application.

3. Heard learned counsels for both parties. Learned counsel for defendants has also relied upon the case law of Hon'ble Bombay High Court (Aurangabad Bench) in **Bhausahab Sukhdeo Khandagale**

Vs. Kanifnath Shrirang Khandagale And Others reported in DLD(Cri)-2023-2195, in which Hon'ble Bombay High Court has held that amendment cannot be allowed to fill the lacuna in the evidence and at the belated stage. Here, defendant No.1 and 2 have yet to file their written statement and suit is at initial stage, so ratio laid down in the above case law is not helpful to them.

4. Present suit is for partition and separate possession and by way of proposed amendment, plaintiff wants to add the property (locker) which according to him is on the name of his father and in the bank of defendant No.4. It is settled principle of law that the Court may allow either party to amend his pleading which may be necessary for determining the real question in controversy in the suit. Even though defendant No.1 and 2 have contended that there is no evidence about the said locker but, merits of the proposed amendment cannot be taken into consideration and defendants have an opportunity to counter the same, when they have yet to file their written statement. As the suit is at initial stage and so there is no impediment for allowing the proposed amendment as sought. Consequently, following order.

ORDER

1. Application is allowed.
2. Permission granted for amendment as mentioned in the application.
3. Plaintiff to carry out amendment accordingly and file copy of the amended plaint within 14 days.

Jaysingpur.

Date : 24/09/2024.

(Y. H. S. Deshmukh)

Civil Judge Senior Division,
Jaysingpur, Dist.Kolhapur.