

ORDER PASSED BELOW EXHIBIT NO.64
IN R.C.S. NO.43/2015.

The plaintiff has filed instant application under Order-VI, Rule-17 of the Code of Civil Procedure, 1908 for amendment of plaint.

2. By this application, the plaintiff has contended that the plaintiff has mentioned her genealogy in para no. 4 of the plaint. She further stated the name of her mother is entered in it but mistakenly she forget to made her as party to the suit. According to the law her mother is necessary party to the suit. She also wants to amendment in para no.4,7,8,10 and 15 of the suit in respect of her mother. Therefore, by way of proposed amendment, the plaintiff wants to correct title page by adding her mother as defendant no.8 of the suit. It is contended that, the present suit is for partition and separate possession of the suit property. By the proposed amendment, neither the nature of suit will be changed, nor will cause any prejudice to the defendants. On the other hand, the proposed amendment is necessary for proper adjudication of the matter. Hence, the plaintiff has prayed to allow the proposed amendment.

3. The defendants nos.1 to 5 have objected the instant application by filing their say on same application. In argument they denied all the contentions made in the instant application. It is contended that, the suit is fixed for final hearing and at this stage of the matter, the plaintiff can not be permitted to amend the suit. The proposed amendment will change the nature of the suit. It is

alternatively contended that the application may be allowed subject to heavy cost for delay.

4. I have heard the learned advocates for the respective parties at length.

5. Considering the instant application, the following points arise for my determination and I have recorded my findings thereon with reasons stated below.

<u>SR.NO.</u>	<u>POINT</u>	<u>FINDINGS</u>
1.	Whether the proposed amendment ... will change the nature of suit ?	<u>NO.</u>
2.	Whether the proposed amendment is ... necessary for the proper adjudication of the matter ?	<u>YES.</u>
3	What order ?	... <u>AS PER FINAL ORDER.</u>

-: REASONS :-

AS TO POINT NOS. 1 TO 3 :-

6. In view of Order VI, Rule 17 of the Civil Procedure Code, 1908, where the amendment does not alter the nature of the suit or nor substitute the cause of action in the original plaint, then it is always open for the Court to allow the amendment of the pleading at any stage of the proceeding. However, no prejudice is to be caused to the other side which can not be compensated by the cost. The object of the amendment is to avoid the multiplicity of the proceedings and to determine the real question in controversy.

7. Considering the aforesaid aspect, if the instant application is considered, it is seen that, the plaintiff has instituted the present suit for partition and separate possession of the suit property. It is the matter of record that, after decision of exh.5 application the matter is fixed for evidence of the plaintiff. The plaintiff has mentioned name of her mother in genealogy of her family. The suit is silent about pleading in respect of her mother. It is also admitted fact that the Bebitai is the mother of the plaintiff. On this background, the plaintiff has moved the instant application under Order VI Rule 17 of the Code of Civil Procedure, 1908 for amendment of plaint and by the proposed amendment, the plaintiff has prayed to correct the title of the suit by adding her mother as defendant no.8. The plaintiff has also seek necessary amendment in para no.4,7,8,10 and 15 in connection with her mother Bebitai. The plaintiff also wants to rectify relationship between her family members. The plaintiff also wants to add banking details. According to the plaintiff, the proposed amendment is necessary for proper and effective adjudication of the matter and the same will not cause any prejudice to other side.

8. The defendants have objected the instant application on the ground of delay and cost. The evidence of the plaintiff is not yet begin. In such circumstances, if the plaintiff is permitted to correct the description of the suit property, it will not amount to displacing the case of the defendants. Therefore, the plaintiff has sought to add her mother as defendant no.8 and relevant pleading in that respect. In such circumstances, in my considered view, addition of party i.e. necessary party and correction connected pleadings in any case, will not amount to change in nature of suit.

09. On the other hand, the proposed amendment whereby the addition of necessary party and relevant pleading in support of her case are sought to be corrected, is necessary for the purpose of proper adjudication of the matter and in order to avoid the multiplicity of the proceedings. The proposed amendment will neither cause any prejudice to the defendants, nor it will change the nature of suit. Therefore, though the proposed amendment has been sought after commencement of trial, this Court is satisfied that the proposed amendment is necessary for the purpose of determining the real question in controversy between the parties and also in order to avoid the multiplicity of the proceedings.

10. Thus, for the reasons stated supra, I hold that the amendment sought is to be allowed. Hence, I answer point Nos.1 and 2 accordingly and in answer to point No.3, I proceed to pass following order.

ORDER

1. Application Exhibit 64 is allowed.
2. The plaintiff shall carry out the proposed amendment within the period of fourteen days from the date of this order, subject to payment of cost of Rs.200/- [Rs. Two hundred only] to be paid to the defendants on or before next day.
- 3 The plaintiff shall also file the appropriate amended copy of plaint.

sd/-

(S.M.Jadhav)

Dt. 18. 11. 2016.

2th Jt. Civil Judge, Junior Division,
Pethvadgaon.

CERTIFICATE

I affirm that the contents of this P.D.F. File Judgment/Order are same, word to word, as per the original Judgment/Order.

Name of the Stenographer	Mrs. Rajashri Rajendra Sawant
Name of Court	Shri. S.M.Jadhav, 2 nd Jt. C.J.J.D. and J.M.F.C., Peth Vadgaon
Date of Dictation	18/11/16
Judgment signed by the P.O. on	18/11/16
Judgment/Order uploaded on	21/11/16