

Regular Civil Suit No.132/2015
(CNR No.MHKO11-000943-2015)

Order below Exh.22

1. The plaintiff has moved the present application for amendment of plaint under Order VI, Rule 17 of Code of Civil Procedure, 1908.

2. Mr. V. V. Kamalakar, the Ld. Counsel for the plaintiff submitted that, the present suit is filed for claiming injunction against the defendants. He further submitted that, besides the present plaintiffs their sisters viz. Shobha Vijaykumal Chavan, Sunita Dhananjay Tambavekar, Kamini Satishrao Nikam, are also having rights in the suit property. Inadvertently the names of sisters of plaintiffs were not mentioned in the plaint and they were not made parties to the suit. Therefore for the just decision of the case, it is necessary to make them parties to the suit. The proposed amendment will not change the nature of the suit and will not cause any loss to the defendants. Hence the plaintiffs prayed that, they be permitted to add the abovenamed their sisters as defendant No.2 to 4 in the present suit by way of the amendment.

3. On the other hand, Mr. B.S. Nerle, Ld. counsel for the defendant strongly objected the application on behalf of the defendant. He submitted that, the defendant is declared as a owner of the suit property as per Section 32-M of the The Bombay Tenancy and Agricultural Lands Act, 1948. Therefore the plaintiffs are not having any right in the suit property. Moreover their sisters also are not having rights in the suit property. Therefore there is no need to add them as a party to the suit. Moreover the present suit is also barred by the Section 85-A of The Bombay Tenancy and Agricultural Lands Act, 1948 and this Court is

not having jurisdiction to entertain the present suit. Hence prayed to reject the application with costs.

4. Heard. Perused the record. The following points arise for my determination and I have recorded my findings thereon for the reasons stated herein below :

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1	Whether the proposed amendment is necessary to resolve the real controversy between the parties ?	<u>Yes.</u>
2	Whether the proposed amendment will change the basic nature of the suit ?	<u>No.</u>
3	What order ?	<u>Application is Allowed.</u>

REASONS

As to Point No. 1 to 3 -

5. Heard. Perused the record. It reveals that, the present suit instituted for perpetual injunction u/s.37 and 38 of The Specific Relief Act. It further reveals that, the plaintiffs are only intending to add their sisters as defendants to the suit. Plaintiffs have not sought any kind of other amendment in the present suit, which can change the basic nature of the suit. Merely inserting the names of their sisters or merely adding them as a defendants will not change the nature of the suit. Moreover considering the objections of the defendant, whether the suit is tenable or not and barred by Section 85-A of The Bombay Tenancy and Agricultural Lands Act, 1948, the application filed by the defendant under Order 7

Rule 11(d) of The Code of Civil Procedure (**Exh.23**) was rejected earlier on merits.

6. The present suit is for injunction, therefore so as to resolve real controversy between the parties, it is necessary to give permission to plaintiffs for carrying out the proposed amendment. Hence the application deserves to be allowed. On the other hand, the defendant needs to be compensated with costs. Hence I have recorded point No.1 in the affirmative and point No.2 in the negative. In view of point No.3 I proceed to pass following order.

ORDER

- 1) The application is allowed, subject to costs of Rs.300/-, it be paid to the defendant.
- 2) The plaintiff are hereby directed to carry out the proposed amendment within 14 days from the date of this order.
- 3) The plaintiffs are hereby directed to file amended plaint accordingly.

Date : 21/06/2018

Sd/-
(J. S. Gaikwad)
Jt. Civil Judge, J.D., Peth-Vadgaon

I affirm that the contents of the P.D.F file order are same, word to word, as per the original order.

Name of the Stenographer	Sou.K.S.Gaikwad
Name of the Court	U.B.Kalapagar, 4 th Jt. Civil Judge Jr.Dn., Kolhapur
Date of Dictation	21/06/2018
Order signed by the PO. on	22/06/2018
Order uploaded on	22/06/2018