

MHKO110015232017



Regular Civil Suit No.159/2017
(CNR No.MHKO110015232017)

Order below Exh.77

01. The defendant No.1, 2, 3(A) to 3(C) have moved the present application for amendment of written statement under Order VI Rule 17 of The Code of Civil Procedure, 1908.

02. The defendants have submitted that, the suit is filed for partition, separate possession and perpetual injunction. The defendant No.1 and 2 have filed their written statement and say at **Exh.29** and denied the contentions made in the plaint. The defendants have specifically denied that, suit properties are ancestral properties. They specifically in their written statement have submitted that, suit properties i.e. Gat No.230 was self acquired property of deceased – Babu and Gat No.113 and 417 were transferred in the name of defendant by their father by filing application before the revenue department. They have further specifically mentioned that, suit property i.e. 2662/A is self acquired property of defendants. They have further stated that, there are other properties mentioned in the plaint. However at the time of filing of written statement, in para No.9 line No.14 it is inadvertently and due to typographical mistake mentioned that, 'वादी यांनी दावा मिळकतीमधील त्यांचा संपूर्ण हक्क सन १९८५ साली सोडून दिलेला आहे.' However in place of word 'दावा' the defendants want to add word 'एकत्र कुटुंबाच्या'.

03. The defendants have further submitted that, the proposed amendment is based on the actual facts and therefore the proposed

amendment will not change the basic nature of the suit. Hence they prayed to allow the proposed amendment.

04. On the other hand, the plaintiff has objected the application by filing her say at **Exh.78** and denied the contentions made in the application. She further submitted that, the proposed amendment is withdrawal on admission, which is not permissible on belated stage. The proposed amendment is sought after the lapse of 43 months 12 days from the date of filing of written statement i.e. from 12/03/2018. There is considerable delay of 1302 days in filing of this application and defendants have not assigned any reason for the same. The proposed amendment application is filed to delay the matter. Hence she prayed to reject the application with costs.

05. Heard Ld. Counsels for both sides. 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 with Costs.</u>

REASONS

As to Point No. 1 to 3 -

06. The point No.1 to 3 are co-related to each other, hence I have taken up them together for discussion.

07. Read application and say. Heard. Perused the record and documents. On perusal, it reveals that, the plaintiff has filed the suit for partition, separate possession and perpetual injunction. The plaintiff has specifically claimed that, suit properties are ancestral properties of plaintiff and defendants and same has been denied by the defendant No.1 and 2 in their written statement at **Exh.29**. The defendants have specifically mentioned in para 9 of their written statement that, plaintiff has relinquished her right in the suit properties in the year 1985. As the defendants are claiming that, the suit properties are their self acquired properties and plaintiff has relinquished her right in the year 1985 in the suit properties as well as other properties, defendants wants to replace the word 'दावा' by adding the word 'एकत्र कुटुंबाच्या' in line 14 of para 9 i.e. 'वादी यांनी दावा मिळकतीमधील त्यांचा संपूर्ण हक्क सन १९८५ साली सोडून दिलेला आहे.'

08. The proposed amendment will not change the basic nature of the suit and if it is allowed, it will not cause any loss to the plaintiff. Therefore considering the nature of the suit and so as to resolve real controversy between the parties and to decide the matter on merits, the proposed amendment deserves to be allowed. Hence I pass the following order.

ORDER

- 1) The application is hereby allowed subject to costs of Rs.1,000/-, it be paid to the plaintiff.
- 2) The defendants are hereby directed to carry out the amendment in their written statement within 15 days from the date of this order.
- 3) The defendants are hereby directed to file copy of amended written statement on record accordingly.

Date : 02/12/2021

(J. S. Gaikwad)
Civil Judge Junior Division,
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	J. S. Gaikwad Civil Judge Junior Division, Peth-Vadgaon
Date of Dictation	02/12/2021
Order signed by the P.O. on	03/12/2021
Order uploaded on	03/12/2021