

**ORDER BELOW EXH. 101 IN R.C.S.No. 4/2013**

1. This application is filed by defendant no. 2 to amend the W.S. under Order 6 Rule 17 of Code of Civil Procedure.

2. It is pleaded by this application that, defendant no. 2 preparing the affidavit of evidence, it is acknowledged by the father of defendant no. 2 that, suit property is transferred in favour of defendant no. 2 vide mutation no. 4606. Therefore, defendant no. 2 was owner prior to filing of suit. It is pleaded that, he has prayed certain amendment, as stated in the application which are required to be carried out for the interest of justice. The gist of application is to add the para no. 5(A) in W.S. after para no. 5. According to defendant no. 2, the application is explanatory in nature and it is based on law point of minority. It is submitted that, by allowing this application no prejudice will be caused to the plaintiff and nature of suit will not change. It is added that, no loss would be caused to plaintiff, rather if the application is rejected, the defendant no. 2 may suffer loss. Further, it may help the court to decide the suit on merit and to avoid further litigation and complication the suggested amendment in the written statement is necessary, hence, prayed to allow the application.

3. Contrary, this application is vehemently opposed by the learned advocate of plaintiff by filing their say at Exh. 104 submitting that, this application is filed by defendant no. 2 to fill up the lacuna. Further, the application is not bonafide one.

Further, by suggested amendment the nature of defence of defendant is going to change. According to plaintiff, in this case the plaintiff has filed his evidence affidavit and now, the suit is for cross-examination of plaintiff. It is averred that, after the suit is part heard and W.S. is filed on 15/03/2014 at Exh. 22, this application is moved and there is no explanation on part of defendants that why such amendment is not carried earlier. There are no good grounds in the application to consider the prayer of amendment. Further, such amendment is barred by Order 6 Rule 17 of Code of Civil Procedure. It is averred that, the amendment suggested in the application is suggested at belated stage of trial. It is argued that, there is no due diligence why such amendment is required to be introduced as well as there is no explanation why that is not suggested earlier in point of time.

4. It is argued that, defendant no. 2 could not take such plea. Further, the issues in this matter framed and evidence of plaintiffs side is also filed on record. It is added that, the amendment is not based upon subsequent event and now it would create multiplicity of proceeding in the suit. Further, such amendment is fatal to the plaintiffs, as it changes the nature of suit. Therefore, the application is not maintainable. According to plaintiffs, this application is filed to just prolong to litigation. Hence, urged to reject the application.

5. I have perused the record. Heard the learned advocate for both parties.

6. The amendment suggested in the application is appears to be best upon plea of minority. Therefore, the

defendants can not be prevented from taking such plea. So far as, Order 6 Rule 17 of Code of Civil Procedure is concern, though the trial commenced, the procedural laws are handmaids of justice. Further, amendment will help to adjudicate the matter on merit. Further, the plaintiffs have opportunity to amend the suit by consequential amendment as well as he may file re-joinder in that respect. So far as plea of due diligence taken by the plaintiffs' is concern that, can be remedied by imposing costs upon defendant no. 2. Considering, commencement of trial, stage of this suit, duration of this matter legal point raised in the application with delay to bring such amendment, it will be just and proper to allow the application by imposing costs of Rs.1,000/-, same shall be paid to the plaintiffs. Hence, following order is passed.

<u>ORDER</u>	
1.	Application (Exh.101) is allowed, on payment of costs of Rs.1000/- on or before 01/02/2025.
2.	On payment of above costs to the plaintiffs (in absence of plaintiffs on depositing the costs in the court) defendant no. 2 is permitted to carry out amendment in the W.S forthwith.
3.	If the defendant no. 2 failed to pay or deposit the costs within time specified, the suit shall proceed from earlier stage.

Kagal
Date:- 17/01/2025

(B.D.Gore)
Civil Judge Junior Division,
Kagal.