

Order Below Exh.50 in R.C.S. No.167/2009.

1. The defendant No.1 and 2 have filed this present application for the amendment of written statement as per Order 6 Rule 17 of the Civil Procedure Code.

2. The defendants contention in the present application is as under :-

The present suit is filed for the partition and perpetual injunction. The evidence of plaintiff is completed and present matter is for the evidence of the defendants. Some material facts relating to the suit properties are remained to be mentioned in to the written statement. The said facts are essential and therefore, needs to be incorporated in to the written statement of the defendants. The proposed amended facts are relating to the suit and needs to be brought on the Court record. The defendant No.1 and 2 prayed to allow the amendment application. The amendment will not change the nature of the suit, it will not adversely affect the plaintiff. Hence, prayed to allow the application.

3. On the contrary, the plaintiff by her say at Exh.52 objected the application. The plaintiff submitted that, the proposed amendment will change the nature of the suit. Only to prolong the suit the present application is filed. Therefore, prayed to reject the application.

4. Heard learned Advocates for both the sides at length.

5. Now, what needs to be seen is that, the proposed amendment is necessary for the fair disposal of the suit, the proposed amendment is not intended or will not change the nature of the suit and also it will not adversely affect the plaintiffs. Through this amendment application the defendants wants to add some material facts relating to the subject matter of the dispute between the parties which remained to be mentioned at the time of filing the written statement. Admittedly, the suit is for the partition. In order to determine the real dispute between the parties and for the fair disposal of the suit all the essential facts relating to the subject matter needs to be brought on the Court record. These addition of the facts will enlighten the Court in deciding the real controversy between the parties. The proposed amendment will not change the nature of the suit and it is not contrary to the previous pleading of the defendants. Hence, the same needs to be allowed. For the fair disposal of the suit all material facts regarding the suit properties must be on the Court record.

6. Hon'ble Supreme Court in the case of the **Ganga Bai v. Vijay Kumar, 1974 (2) SCC 393** ;wherein it was rightly observed: *"The power to allow an amendment is undoubtedly wide and may at any stage be appropriately exercised in the interest of justice, the law of limitation notwithstanding. But the exercise of such far-reaching discretionary powers is governed by judicial considerations and wider the discretion, greater ought to be the care and circumspection on the part of the Court."*

7. Hon'ble Bombay High Court in the case of **R.K.Patel Engineers and contractors pvt.Ltd. vs. city and industrial**

development corporation of Maharashtra Ltd. and other, held that “*court has wide powers and unfettered discretion to allow the amendment at any stage of the proceedings. Main purpose of the allowing the amendment is to minimize the litigation.*”

8. Hon’ble Bombay High Court in the case of **Prabhakar s/o Warlji Uike & others Vs.Bhaurao s/o Narayanrao Pogale, 2010(6) Mh.L.J.824** held that, “*Amendment of pleadings permissibility- Amendment in the pleadings is permissible if it can enable court to finally determine the real controversy between the parties.*”

9. The proposed amendment sought is only to clarify existing facts already on the record. Perused the ratio laid down by the Hon’ble Supreme Court and High Court as above. Thus, the present amendment will not change the nature of the suit, it will not affect the plaintiff adversely. The present application deserves to be allowed. Hence, the following order.

ORDER

1. The application is allowed.
2. The defendants are hereby directed to carry out the amendment as prayed within the statutory period.

Date- 23/07/2015.
Place-Kagal.

Sd/-
(C.S.Jagtap)
Jt.Civil Judge Jr.Division.,
Kagal

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	Sandip Maruti Patil (L.G.)
Name of Court	Jt. Civil Court & J.M.F.C. Kagal
Date of Dictation	23/07/2015.
Judgment signed by the P.O. on	23/07/2015.
Judgment uploaded on	23/07/2015.