

MHKO130007162009



Order below Exh. 82 in R.C.S. No. 167/2009.

(Smt. Saraswati Bedkalye Vs Shri. Mahadev Bedkalye)

1. This is an application filed by defendant Nos. 1 and 2 under Order 6 Rule 17 of the Code of Civil Procedure for getting permission to carry out the amendment in written statement.

2. It is submitted by defendant Nos. 1 and 2 that the main suit is filed for partition. The matter is fixed for evidence of defendants. It is contended by defendants that the information in respect of family of defendant No. 1 and regarding suit property is remained to be mentioned in the written statement. Therefore, by way of proposed amendment, the present defendants wants to add additional facts in respect of same in their written statement. The proposed amendment is formal in nature. For adjudication of real controversy between parties, the proposed amendment is necessary. Therefore, they filed present application.

3. On the other hand, plaintiff has filed her say and resisted the contents of this application. She submitted that present suit is filed in the year 2009. The defendants have filed written statement on 05/03/2010. Thereafter, defendants have amended their written statement on 04/09/2015. The plaintiff closed her

evidence on 23/08/2016. Thereafter, the evidence of defendant No. 10 closed on 26/07/2019. In such fact situation, the defendants have no right to ask proposed amendment. The amendment sought would change the nature of suit. The defendants have intentionally prolonged the matter. Therefore, she prayed for rejection of present application.

4. Perused the application and say filed thereon. Heard learned Advocates for both the sides. Studied Order 6 Rule 17 of the Code of Civil Procedure. The issues have been framed on 04/02/2013. Thereafter, the evidence of plaintiff is closed by him on 05/04/2017 vide purshis Exh. 60 and thereafter, the evidence of supporting defendant No. 10 also completed and closed on 26/07/2019 vide Exh. 80 and thereafter, this application for amendment was moved. This shows that the trial is already commenced. Therefore, as per proviso of Order 6 Rule 17 of C.P.C., defendant Nos. 1 and 2 have to show that in spite of due diligency, they failed to apply for proposed amendment, which is in respect of their family, before commencement of trial. But, there is no single reason mentioned in the present application. Further, the proposed amendment is in respect of possession and partition of defendant Nos. 1 and 4. This shows that it is in their knowledge since beginning. So, they have to plead cogent reason for non applying for proposed amendment before commencement of trial. But, it is not happened, so on the sole count, the present application for amendment is liable to be rejected.

5. Moreover, by way of present application, defendant

Nos. 1 and 2 tried to plead that there is no partition among defendant Nos. 1 and 2 and so, the plaintiff has no right to claim partition. Defendant No. 1 is the father-in-law of plaintiff and defendant No. 4 is the brother of defendant No. 1. By way of present amendment, defendant Nos. 1 and 2 tried to plead that there is no partition among them. So, the wife of predeceased son i.e. plaintiff of defendant No. 1 has no right to claim partition in their property. This pleading apparently going to change the nature of defence. Now, the evidence of plaintiff is closed, so the amendment which is going to change the nature of defence is not permissible at this juncture. So also, the application deserves to be rejected. Hence, following order is passed.

ORDER

1. The application is rejected.
2. No order as to costs.

Date-04/10/2019.
Place- Kagal

(V. H. Khedkar)
Jt. Civil Judge Jr.Dn., Kagal