

**R.C.S.No. 167/2009**

Saraswati Bedkyale Vs. Mahadev Bedkyale

CNR - MHKO130007162009**ORDER PASSED BELOW EXH. 102****(Dt. 11/10/2024)**

1. This application is filed by plaintiff to amend the plaint under Order 6 Rule 17 read with section 151 of Code of Civil Procedure.
2. According to plaintiff, this suit is filed for partition and perpetual injunction. 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 some matter vide para no. 4(A) after para no. 4 as well as to delete the valuation of “Rs.6,040/-” and to insert “Rs.8,040/-” by way of amendment in para no. 7 and suit title of plaint. Further, to amend the prayer clause by inserting prayer of declaration by inserting para no. 10-A(1) & 10-A(2) as mentioned in the application. Hence, filled this application for necessary amendment in the plaint.
3. It is submitted by the learned advocate of the plaintiff that, by allowing this application no prejudice will be caused to the defendants and nature of suit will not change. Further, this amendment is subsequent in nature due to sale executed in favour of Shahrukh Sanadi in the year-2023 as well as in favour of Santosh Dadaso Mane. It is added that, no loss would be caused to defendants, if the application is the allowed. Whereas, if the application is rejected, the plaintiff may suffer loss. It is argued that, the amendment would help to bring the proper facts on record. It is submitted that, trial is yet not commenced. Hence, prayed to allow

the application.

4. Contrary, this application is vehemently opposed by the learned advocate of defendants by filing their say at Exh.105 submitting that, this application is filed by plaintiff to fill up the lacuna. According to defendants, the facts stated in the application is entirely false. It is averred that, the amendment suggested in the application is suggested after commencement of trial. Moreover, it would create multiplicity of complication in the suit. Further, such amendment is fatal to the defendants, as it changes the nature of suit as well as there is no due diligence on part of the plaintiff to suggest the amendment within specific time. It is added that, by way of such amendment nature of suit will change. Therefore, the application is not maintainable. Further, the suggested amendment is not bonafide in nature and it is filed to prolong the matter. Consequentially, it is prayed to reject the application with costs, with prayer to impose costs of Rs.3,000/- in case the court permits the plaintiff to amend her plaint.

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

6. Issues in this matter are framed on 04/02/2013 & 26/07/2019. Moreover, there appears some transaction executed vide register deed no. 687/2023 in favour one Shahrukh Sanadi on 28/12/2023 as well as in favour of Santosh Dadaso Mane. Thus, these circumstances indicate subsequent development in the suit. Further, though the issues in this matter are framed, yet the cross-examination is not commenced. Beside that, procedural laws are

handmaids of justice. Further, the defendants have opportunity to amend their W.S. by way of consequential amendment. So far as plea of due diligence taken by the defendants is concern that, can be remedied by imposing costs upon plaintiff. Considering, stage of this suit, duration of this matter, with nature of its amendment, and the plaintiff being woman residing at Chikodi, it will be just and proper to allow the application by imposing costs of Rs.300/-, same shall be paid to the defendants. Hence, following order is passed.

<u>ORDER</u>	
1.	Application (Exh.102) is allowed, on payment of costs of Rs.300/- be payable to the defendants on or before next date.
2.	On payment of above costs to the defendants (in absence of defendants on depositing the costs in the court) plaintiff is permitted to carry out amendment in the plaint forthwith and thereafter, the plaintiff shall carry out the necessary amendment soon after payment of costs, and shall submit her amended plaint.
3.	If the plaintiff failed to pay or deposit the costs within time specified, the suit shall proceed from earlier stage.

Kagal.
Date: 11/10/2024.

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