

Order Below Exh.36 in R.C.S. No.332/2012.

1. The defendants have filed this present application for amendment of written statement as per Order 6 Rule 17 of C. P. C.

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

The plaintiffs have filed this present suit praying the relief of perpetual injunction against the defendants. The defendants have filed another suit bearing No.233/2012 against the present plaintiffs praying the relief of partition and separate possession. In the present matter, some material facts relating to the subject matter of the suit remained to be mentioned into the written statement. Therefore, through this present application the defendants prayed to add the facts relating to subject matter of the suit. The proposed amendment will not change the nature of the suit. Hence prayed to allow the application.

3. On the contrary, the plaintiffs through their say below Exh.39 objected the application. They submitted that, the application is not tenable. The defendants have filed the present application at belated stage. The proposed amendment will change the nature of the suit. If the application is allowed it will adversely affects the defendants. On these ground, prayed to reject the application. If the application is allowed heavy cost be imposed on the defendants.

4. Heard learned Advocates for both the side 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 defendants. The reason assigned by the plaintiff is that the proposed amendment is in respect of subject matter of the dispute. Perused the plaint and written statement. Gone through the proposed amendment submitted by the defendants. The proposed amendment is in respect of subject matter of the dispute. All the facts relating to the subject matter of the dispute needs to be brought on the Court record for fair disposal of the suit and for finally determining the rights of the parties.

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. The 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. The 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. 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 plaintiffs adversely. The present application deserves to be allowed. Hence, the following order.

ORDER

1. The application is allowed subject to cost of Rs.500/- to be paid to the plaintiffs.
2. The defendants are hereby directed to carry out the amendment as prayed within the statutory period.

Sd/-

Date- 12/10/2015.

Place-Kagal

(C.S.Jagtap)

Jt. Civil Judge Jr.Dn., 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	12/10/2015.
Judgment signed by the P.O. on	12/10/2015.

Judgment uploaded on

12/10/2015.