

Order below Exh. 181 in Regular Civil Suit No. 64/1989.

This is an application moved by defendants under Order 6 Rule 17 of the Code of Civil Procedure for amendment of written statement.

2) Heard learned advocate Shri. V.R. Patil for the defendants and learned advocate Shri. R.P. Bandiwadekar for the plaintiff.

3) The defendants contended that plaintiff has instituted the present suit for the relief of partition and separate possession. It is the principle of Hindu Law that in a suit for partition all the properties belonging to the joint Hindu family are included in common hotchpot. The defendants contested the suit by filing their written statement vide Exh.52. Defendants contended that it came to their knowledge that Gat Nos.1277/1, 1277/6, 1277/10, 1277/15, 1277/20, 1311, 814, 1093, 1097 are the joint family properties of the plaintiff and defendants. However, they have failed to take the plea in their written statement that plaintiffs have not include all these joint family properties situated at village Nandawade, Taluka-Chandgad in common hotchpot. Therefore, the suit is not maintainable. Hence, the application.

4) The plaintiff contested the application by filing his say vide Exh.183. Plaintiff contended that defendants have filed their written statement vide Exh.52 on 23/10/1990 and after lapse of 25 years, at this belated stage this application for amendment of written statement. Hence, there is abnormal delay in filing this application.

5) Plaintiff further contended that he adduced his evidence on 31/03/2016. Therefore, trial is commenced. Hence, in view of proviso to Order 6 Rule 17 of the Code of Civil Procedure the application is not tenable. Therefore, application is liable to be rejected.

6) It is true that plaintiff has adduced his evidence. Hence, the trial of suit is commenced. The perusal of application does not reveal any satisfactory reason why defendants have not moved this application at the earliest possible opportunity. The perusal of 7/12 extracts of lands Gat Nos.1277/1, 1277/6, 1277/10, 1277/15, 1277/20, 1311, 814, 1093, 1097 vide list Exh.180/1 to 180/9 revealed that are tenanted properties in the name of plaintiff. The plaintiff has share in Gat No.1311, 814, 1093, 1097. In a suit for partition, it is the

bounden duty of the plaintiff and defendants to include all the family properties possessed by them. Therefore, these 7/12 extracts revealed that these properties are standing in the name of the plaintiff. Despite that, these properties are not made subject-matter of the suit. Hence, it appears that there is substance in the application of the defendants. Therefore, though the trial is commenced. If the application is rejected, then it would create multiplicity of the proceeding. On the contrary, if application is allowed, no prejudice would be caused to the plaintiff. On the contrary, it is helpful to determine the real controversy between the parties. Moreover, if the application is allowed, then nature of the suit will not be changed. Hence, the application deserves to be allowed.

7) Admittedly, the defendants have caused the delay for seeking the amendment. Hence, the defendants have to compensate to the plaintiff for the delay caused. Hence, application deserves to be allowed by imposing costs. Therefore, I proceed to pass the following order.

O r d e r

1) Application is allowed subject to payment of costs of Rs.500/- (Rupees five hundred only) to the plaintiff on or before next date.

2) After compliance of above order, the defendants are permitted to carry out the amendment as prayed and to file the copy of amended written statement, on or before next date.

3) Failure to comply the above order on or before next date, the application shall be deemed to be rejected.

Sd/-

(M. D. Thombare)

Civil Judge, Jr. Dn., Chandgad.

Dated:- 08/09/2016.

C E R T I F I C A T E

I affirm that the contents of this P. D. F. file Judgment/Order is same, word to word, as per the original Judgment/Order.

Name of the Stenographer	Shri. V. L. Tatkod, L. G. Stenographer.
Name of Court	Shri. M.D. Thombare, Civil Judge, Junior Division and Judicial Magistrate, First Class, Chandgad.
Date of Dictation	08/09/16
Judgment/Order signed by the P. O. on	08/09//16
Judgment/Order uploaded on	09/09/16