

Order below Exh. 183 in Regular Civil Suit No. 64/1989.

This is an application moved by the plaintiff under Order 6 Rule 17 of the Code of Civil Procedure for amendment of plaint.

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

3) Plaintiff contended that he filed the present suit for the relief of partition and separate possession of the ancestral and joint Hindu family properties against the defendant. However, due to oversight he failed to add the agricultural lands bearing Gat Nos.1097, 1277/20, 1277/15, 1277/10, 1277/9, 1277/6, 1277/1, 1311, 1082, 814 and 1093 situated at village Nandawade, Taluka-Chandgad, District-Kolhapur. Hence, by way of this application plaintiff wants to incorporate these Gat numbers as subject-matter of the suit.

4) The defendants contested the application by filing their say vide Exh.186. They contended that plaintiff has filed his affidavit of examination-in-chief. Hence, the trial of suit is commenced. The plaintiff has knowledge that the proposed properties are the ancestral and joint Hindu family properties of the family of plaintiff and defendants. Therefore, the reason mentioned in the application that due to oversight plaintiff has failed to add these properties in the suit is not tenable. The plaintiff has moved this application after lapse of 27 years. Hence, the application is liable to be rejected.

5) It is true that plaintiff has moved the application for amendment after lapse of 27 years. It is true that the trial of suit is commenced. However, by way of this application, plaintiff wants to incorporate agricultural lands bearing Gat Nos.1097, 1277/20, 1277/15, 1277/10, 1277/9, 1277/6, 1277/1, 1311, 1082, 814 and 1093 situated at village Nandawade, Taluka-Chandgad, District-Kolhapur. Plaintiff contended that these properties are the ancestral joint family properties of the family of plaintiff and defendants. It is settled principle of Hindu Law that in a suit for partition all the ancestral or joint family properties of the family are to be included in the common hotchpot. If the application is rejected, then the suit will be dismissed on technical ground i.e. non inclusion of all the properties in the common hotchpot. Hence, if the application is allowed, no

prejudice will be caused to the defendants. Hence, I hold that if application is allowed, then nature of suit will not be changed. Hence, to avoid the multiplicity of the proceedings and to determine real controversy between the parties, I hold that application deserves to be allowed.

6) Admittedly, the plaintiff has caused delay for seeking proposed amendment. Hence, plaintiff has to compensate to the defendants 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.1,500/- (Rupees one thousand five hundred only) to the defendants, on or before next date.

2) After compliance of above clause, plaintiff is permitted to carry out the amendment in the plaint as prayed and to file the copy of amended plaint, 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.

Dated:- 14/10/2016.

Sd/-
(M. D. Thombare)
Civil Judge, Jr. Dn., Chandgad.

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	14/10/16
Judgment/Order signed by the P. O. on	14/10/16
Judgment/Order uploaded on	14/10/16