

**ORDER BELOW EXH. 113 IN R.C.S. NO. 103/2007.**

Shri. Dasharath Tatoba Patil @ Gawade, etc. Vs. Shri. Rama Bhagoji Patil @ Gawade, etc.

This is the suit for partition, separate possession and perpetual injunction. By application filed at Exh. 113 vide Order VI, Rule 17 and u/s. 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code'), the plaintiffs prayed to grant them permission to carry on some amendment in the plaint. The proposed amendment is given in second paragraph of paragraph No. 1 of the application. The plaintiffs have contended that, in paragraph No. 3 of the plaint after second line the word 'hindu undivided family' is to be added and in third line of the said paragraph the word 'joint family' is sought to be replaced by the word 'hindu undivided family'. Also in forth line, the figure '1969' is prayed to be replaced with the figure '1959'. And in fifth line, the word 'manager' is prayed to be replaced with the word 'member'. The plaintiffs further contended that, for effective decision of the suit the amendment so sought is required to be made and thereby, the plaintiffs do not bring any new case nor nature of the suit is going to be changed. Further, if the prayed amendment is granted, no hardship would cause to the other side. With these and such other grounds, the plaintiffs have prayed to grant the application. The application is supported with affidavit of plaintiff No. 1.

2. By filing say on backpage of the application, the defendants contested and strongly objected the application. The defendants have

contended that, hearing of the case each in progress and at this stage, amendment in plaint can not be granted in prayed terms. The application is not signed by all the plaintiffs and therefore, the same is not tenable. By way of proposed amendment, the plaintiffs are in attempt to bring new case before the Court and therefore, they prayed to reject the application.

3. Heard Adv. Shri. S.S. Kot, for the plaintiffs and Adv. Shri. V.R. Patil, for the defendants at length.

4. Admittedly, hearing of the suit is in progress. If the provision i.e. Rule 17 of Order VI of the Code is strictly applied, such amendment can not be allowed at this stage. However, the Hon'ble Bombay High Court, in the case of Mangal Harilal Doshi Vs. Sarvadaman Mansukhlal Doshi and Ors., 2003(1) Mh LJ 390, has held that, 'the power to allow the amendment is vide and can be exercised at any stage of the proceedings. While it is true that the amendment can not be claimed as a matter of right under all circumstances. It is equally true that the Court while deciding prayers for amendment should not adopt the hypertechanical approach. Amendments are allowed in pleading to avoid uncalled for multiplicity of litigation.'

5. Turning to the matter in hand, probably, out of ignorance or negligence or the advocate of the plaintiffs, in the plaint the word 'Hindu' is written nowhere. The suit is for partition. For partition, in India separate and independent personal laws are applicable. Just by referring

names of the parties, their religion can not be inferred in absence of specific averment in that regard. Moreover, unless and until, religion of the parties in the suit is ascertained, it is impossible for the Court to refer any specific personal law to effect partition of the suit properties. Therefore, such reference is very necessary in the suit in the nature of pleading. It can not be ignored that, the parties to the litigation can not be put to hardship because of mistakes of their advocates. If the amendment is not granted in prayed terms, the entire exercise of the parties in the suit will ruin. Therefore, the amendment so sought is deserve to be allowed. Another amendment in figure is out of negligence and the same can be allowed to be rectified by way of amendment. So far as hardship caused or to be caused to the defendants because of the said amendment, can well be compensated by awarding adequate costs to them. Nature of the suit is not going to be changed nor new story or case is being brought by the plaintiffs by the prayed amendment in the plaint. Thus, the application deserves to be allowed. Hence, following order is passed.

ORDER

Application at Exh. 113 is allowed in following terms and with the costs of Rs. 2,000/- to be paid to the defendants.

On payment of costs the plaintiffs are permitted to carry out amendment in the plaint as prayed.

In all cases, the plaintiffs shall comply the order within 14 days from date of this order by depositing the amount of costs and carrying out amendment in the plaint.

The plaintiffs shall also file amended copy of the plaint along with it's copies in sufficient numbers to supply them to the defendants and also a copy for preparing decree.

Chandgad
dt. 18.02.2020

(Amrit C. Birajdar)
Civil Judge Junior Division, Chandgad

CERTIFICATE

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	Shri. V.G. Kamble, L. G. Stenographer.
Name of Court	Shri. A. C. Birajdar, Civil Judge, Junior Division and Judicial Magistrate, First Class, Chandgad.
Date of Dictation	18/02/2020
order signed by the P. O. on	18/02/2019
order uploaded on	18/02/2019