

1 Regular Civil Suit No.60/2002.
Babu Chavan Vs. Abaji Chavan and ors.
(Order below Exh.147)
CNR No.MHKO17-000166-2002

ORDER BELOW EXH.NO. 147

01] Defendant nos.1 A, B, C and D and defendant no.2 have filed this application under Order VI Rule 17 of Civil Procedure Code for amendment of written statement.

02] As per the application, these defendants have filed their written statement and in written statement, in paragraph no.4, they have pleaded about the partition of properties of Chavan family and for that purpose, for bringing more clarity in the said pleading these defendants are willing to include the contents mentioned in the proposed amendment regarding the contents about partition, entries in the revenue record and suit properties at Sr. No.1 to 6 in plaint paragraph no.1, are not available for partition etc. It is contention of these defendants that due to the proposed amendment, no loss will cause to plaintiff and defendants are not introducing new case, but the proposed amendment is necessary for bringing more clarity and specification in the defence of defendants and the same is necessary for decision of disputes between the parties on merits.

03] Plaintiff has filed say vide Exh.154 and opposed the application. As per the say of the plaintiff, application is false and this suit is for partition and separate possession and suit is filed on 20/4/2004 and thereafter defendants have filed written statement. Defendants have not mentioned reason as to why they have not

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filed this application since last 16 years and so there is bar of proviso to order VI Rule 17 of Code of Civil Procedure. It is contention of the plaintiff that plaintiff has filed affidavit of examination in chief and trial has commenced. Defendants are not due diligent and intention of defendants, is not bona fide. This application is after thought and filed with an intention to introduce new case and it is changing the nature of previous pleadings. So plaintiff has prayed for rejection of the application.

04] Heard both the sides. After going through the application, say and the documents on record, following points arise for determination and I am giving my findings thereon for the reasons stated therein:-

Sr.No.	Points	Findings
1	Whether proposed amendment is necessary for decision of this suit on merits ?	In the affirmative.
2.	Whether proposed amendment is going to change the nature of this suit ?	In the negative.
3.	What order ?	As per final order

REASONS

AS TO POINT NOS.1 & 2:-

05] Heard both the sides and perused the record. Perusal of record shows that plaintiff has filed this suit for partition. Record shows that defendant no.1 died and after his death, his legal representatives defendant nos.1 A, B, C and D are brought on record and filed their written statement vide Exh.132 on 17/4/2017. Defendant nos.1 A, B, C and D have denied the claim

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of plaintiff and pleaded that, predecessor of plaintiff and defendants are residing separate since long and cultivating their properties separately and suit properties are not available for partition. These defendants have pleaded that suit properties are separate properties since long. Record shows that the said written statement, is filed by defendant nos.1 A, B, C and D on 17/4/2017 and thereafter power of attorney on behalf of plaintiff namely Ashok Babu Chavan has filed his affidavit of examination in chief vide Exh.151 on 29/10/2018.

06] In the light of above factual background, it is necessary to mention here that in this suit, the dispute between the parties, is in respect of nature of suit properties and as to whether suit properties are available for partition. As per the case of plaintiff, suit properties have come to them from their ancestors and some properties are inam properties, and partition of the same, has not taken place, however, the said facts are denied by defendant nos.1 A, B, C and D and defendant no.2 in their pleadings. Further, even though in the say to this application, plaintiff has opposed this application on the ground of delay and mentioned that defendant nos.1 A, B, C and D and defendant no.2 have made delay of 16 years, however, as mentioned above, defendant nos.1 A, B, C and D have filed their written statement vide Exh.132 on 17/4/2017. Further, perusal of the written statement of defendant nos.1 A, B, C and D and defendant no.2, it shows that since beginning they have come with the case that since prior, suit properties are separate

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properties and the said properties are not available for partition. So the contents in the proposed amendment, which are in respect of entries in the revenue record as to separate nature of the said properties, are not contrary to the previous pleadings of defendant nos.1 A, B, C and D and defendant no.2. So also, if the proposed amendment is allowed, then it will not cause any irreparable loss to plaintiff as the roots of the said pleadings, are already therein in written statement of these defendants. If the proposed amendment is allowed, then it will not cause any loss to plaintiff but it will be helpful for decision of this suit on merits.

07] Plaintiff has opposed the application on the ground of bar of proviso of order VI Rule 17 of Code of Civil Procedure and submitted that application is filed after commencement of trial, however, perusal of record shows this application for proposed amendment, is filed on 29/10/2018 and on the same day power of attorney for plaintiff namely Ahsok Babu Chavan has filed affidavit of examination in chief vide Exh.151. This application is filed prior to the filing of affidavit of examination in chief of P.W.1 Ashok. Further, the proposed amendment is relevant and it is not changing the nature of previous pleading of defendants and so in such circumstances, in the light of above observations, I do not find any substance in the said objections taken by plaintiff.

08] As discussed above, from the above facts and circumstances, it is clear that proposed amendment is necessary for

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decision of this suit on merits and it is not changing nature of the suit. So in such circumstances, I answer point no.1 in the affirmative and point no.2 in the negative.

AS TO POINT NO.3:

09] As I have already answered point No.1 in the affirmative and point no.2 in the negative, so in order to answer point no.3, I proceed to pass the following order:-

ORDER

- 1) Application is allowed subject to the costs of Rs.700/- [Rupees seven hundred only] payable to plaintiff.
- 2) Defendant nos.1 A, B, C and D and defendant no.2 are permitted to carry out necessary amendment as mentioned in this application within 14 days from today and file on record copy of amended plaint without fail.
- 3) As the matter is too old and necessary to decide as early as possible, so both the parties are directed to co-operate for expeditious disposal of the matter.

Place:-Panhala.
Date:-19/11/2018

Sd/-
(V.A.Awaghade)
Jt. Civil Judge Junior Division,
Panhala.

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-: CERTIFICATE :-

I affirm that the contents of the P.D.F. file order are same, word to word, as per the original Order.

Name of the Stenographer	Shri.A.A.Patil
Name of Court	Shri. V.A.Awaghade
Date of Dictation	19/11/2018
Order signed by the P.O. on	21/11/2018
Order uploaded on	21/11/2018