

1 Regular Civil Suit No.60/2002.  
Babu Chavan Vs. Abaji Chavan  
(Order below Exh.174)  
CNR No.MHKO170001662002

MHKO170001662002



**ORDER BELOW EXH.NO. 174**

Plaintiff has filed this application for amendment of  
plaint under Order VI Rule 17 of Civil Procedure Code, 1908.

2] As per the application, plaintiff has filed this suit for  
partition and defendants have filed their written statement and  
defendants have filed on record alleged sale deed and other  
documents, due to which, plaintiff has constrained to file this  
amendment application for proposed amendment. As per the  
application, defendants have amended their written statement and  
filed on record sale deed on 29.10.2018. Yesaba Aba Chavan was  
illiterate person and he was suffering from fits and was not having  
knowledge as to what he was going, due to which, he died by  
falling in well and he was not having any legal necessity for selling  
suit property. Deceased Yesaba was mentally suffering and was not  
having knowledge of law and he had never executed sale deed.  
Dadu Dyanu Chavan and others were residing in joint family and  
had got executed false sale deed from Yesaba. Dadu & others were  
residing in joint family & Dadu was looking after all the family  
members and he was well educated and he has sanctioned entries  
regarding the false and bogus transactions and the said  
transactions are not binding on plaintiff, due to which plaintiff,

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has filed this application for amendment. So, by this application, plaintiff is willing to include the content in respect of said sale deed as illegal, without consideration and bogus and declaration to that effect. As per the application, the proposed amendment is necessary for decision of this suit on merits and it is not going to change nature of the suit and it will not cause any loss to defendants. So, plaintiff has prayed for proposed amendment.

3] Say of defendants was called. Defendant no. 1- A,B,C, D and defendant no.2, have filed their say vide Exh.175 and denied the contents in the application. As per the say of these defendants, application is false and not bonafide and contents in the application are not true. The prayer of the plaintiff in respect of the relief of the declaration, is time barred and the same can not be granted. Defendant no. 2 Balwant has filed his written statement in the year 2003 and he has specifically mentioned in his written statement that Manjabai and her brother Yesaba were residing separately and some properties were separately recorded in the name of Yesaba and Manjabai, had filed vardi application for recording the name of Yesaba to some lands by deleting her name, due to which, Yesba had become full owner and his name came to be recorded and he was cultivating the properties. Father of defendant no. 1 to 6 has become owner of the suit property by registered sale deed no.1075 dated 20.12.1952 and contents in respect of said sale deed, are specifically mentioned in the written statement of defendant no.2 and thereafter, after more than 15

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years, plaintiff is claiming relief against the said sale deed after it's knowledge and so the proposed amendment and relief of declaration, is barred by limitation and plaintiff is not entitled for the proposed amendment.

4] It is further contention of the these defendants that the proposed amendment is going to change the nature of the suit & so these defendants have prayed for rejection of the application and in the alternative, it is the contention of these defendants that if the application came to be allowed then the effect of the proposed amendment shall be treated from the date of filing of this application and not from the date of filing of the suit. So, also defendants have prayed for compensatory costs of Rs.5000/- for delay from plaintiff.

5] Heard Ld. Advocate for the plaintiff and Ld. Advocate for defendants. After going through the application, say and the documents on record, following points arises for determination and I am giving my findings thereon for the reasons stated therein:-

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

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**REASONS**

**AS TO POINT NOS.1 & 2:-**

6] Learned Advocate for plaintiff submitted that proposed amendment is necessary for the decision of this suit on merits and it is not going to change the nature of the suit. He submitted that, defendants have amended their written statement, due to which, cause of action for filing this application, has arose and proposed amendment is within limitation. In support of said arguments, learned advocate for plaintiff, has relied upon the following case laws.

1. Decision of Hon'ble Supreme court in the case of Life Insurance Corporation of India V/s. Sanjeev Builders Pvt. Ltd. & ors., 2018 SCCR 29.
2. Decision of Hon'ble Bombay High court in the case of Aasma Abdul Majeed & anr. V/s. Jayram Arjun Tisge & ors., 1998 (4) All MR 405.
3. Decision of Hon'ble Bombay High court in the case of Laxman s/o. Marotirao Paunikar V/s. Kesharao s/o. Rambhau Paunikar, 2001 (1) All M.R. 157.
4. Decision of Hon'ble Bombay High court in the case of Shri. Rajaram Naik V/s. The state of Goa & ors., 2016 (1) All MR5.
5. Decision of Hon'ble Bombay High court in the case of Shri. Shankarrao Dattatrayu Patil & ors. V/s. Shri. Shaikh Abdul Razak & ors., 2016 (4) All MR 446.
6. Decision of Hon'ble Bombay High court in the case of Narayan Madhavrao Pole V/s. Sumanabai w/o. Uttamrao Napte, 2012 (1) All MR. 214.
7. Decision of Hon'ble Bombay High court in the case of Smt. Shantabai wd/o. Natthuji Thakre V/s. Vasant s/o. Shyamraoji Wankhede & ors., 2014 (6) All MR 852.
8. Decision of Hon'ble Bombay High court in the case of Vijaykumar Narayanrao Dixit V/s. Uday Griha Nirman

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Samasya Niwarak Sanstha, Nagpur, 2006 (2) All MR. 662.

I have gone through the above cited case laws.

7] Per contra learned advocate for defendant no.1 A, B, C, D and defendant no. 2, submitted that application is false and plaintiff was having knowledge regarding the said sale deed since beginning, however he has not claimed relief within time and proposed amendment is not necessary for decision of this suit on merits. He submitted that, plaintiff has made huge delay and not given any proper explanation for the said delay and so he submitted that, application may be rejected and if the said application came to be allowed then effect of the said amendment may kindly be ordered to take place from the date of filing of this application. In support of the said arguments, learned advocate for these defendants, has relied upon the decision of Hon'ble Supreme court in the case of L.C.Hanumanthappa (since dead) represented by his Lrs. V/s. H.B.Shivkumar, 2015 (5) ABR 805.

I have gone through the above mentioned case law.

8] Heard both sides and perused the record. Perusal of record shows that, plaintiff has filed this suit for partition in respect of suit properties and it is contentions of the plaintiff that originally suit properties are ancestral properties of plaintiff and some properties are inam lands and partition of the same, has not taken place. Record shows that, defendant no.4 Savitri Sadashiv Khot has filed written statement vide Exh.17 and defendant no. 2 has filed

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his written statement vide Exh.32. Both these defendants have denied the claim of the plaintiff and specifically pleaded that, deceased Manjabai and her brother in law Yesaba were residing separately. These defendants have specifically pleaded that, father of defendant no. 1 to 6 namely Dadu Dnyanu Chavan has purchased some properties from Yesaba Aba Chavan by registered sale deed bearing no. 1075 dated 20.12.1952 and since then father of defendant no. 1 to 6 and after him, defendant no. 1 to 6 have become owner and possessor of the said properties and they are cultivating the said properties. The said contents in the written statement of defendant no. 2 and 4, which are filed on record vide Exh.32 and 17 on 09.04.2003 and 12.11.2002 respectively, clearly shows regarding the pleading about the said sale deed and so plaintiff can not say that he was not knowing about the said sale deed till amendment of written statement. Further, the dispute between the parties, is in respect of nature of the suit properties & as per the case of the plaintiff, suit properties are ancestral properties, however, it is defence of the defendants that some of the suit properties are purchased by them. So, in such circumstances, even though plaintiff was having knowledge regarding the said sale deed after filing of written statement by defendant no. 2 and 4, and plaintiff has made delay for filing of this application, however, the proposed amendment in the light of rival pleadings of both the parties, can not be said to be irrelevant. Moreover, in the light of pleadings of both the sides, proposed

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amendment is relevant and in respect of the suit properties and it is necessary for deciding dispute between the parties on merits and avoiding multiplicity of the proceeding.

9] As mentioned above, the proposed amendment is necessary for decision of this suit on merits and to avoid further litigations between the parties and it will not cause any loss to the defendants. If the proposed amendment is allowed then it will not change the nature of the suit and it will not cause any irreparable loss to defendants, which can not be compensated in terms of money.

10] As mentioned above, plaintiff has prayed for the relief of declaration in respect of sale deed no. 1075, however, there is delay for claiming the said prayer and so, considering the nature of dispute between the parties, I find substance in the submissions on behalf of the defendant no. 1, A, B, C, D and defendant no. 2 that the effect of the said amendment shall be treated from the date of application and not from the date of filing of this suit.

11] So considering the nature of the disputes between the parties and nature of proposed amendment, it appears to my mind that if the proposed amendment is allowed, then it will be helpful for decision of the disputes between the parties on merits and it will curtail the further litigations, which may arise in between the parties in future. Further, avoiding multiplicity of proceeding, is

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one of the ground for allowing amendment applications. Further, if the proposed amendment is allowed, then also it will not change the nature of the suit and after the proposed amendment also, this suit will be for partition and perpetual injunction. So in such circumstances, the proposed amendment is not going to change the nature of the suit. Hence, I answer point no.1 in the affirmative and point no.2 in the negative.

**AS TO POINT NO.3:**

12] 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 hereby allowed subject to the costs of Rs.1000/- [Rupees one thousand only] payable to defendants no. 1 A, B, C, D and 2.
- 2) Plaintiff to carry out necessary amendment in the plaint within 14 days and file on record copy of amended plaint without fail.
- 3) Effect of the proposed amendment in respect of the relief of declaration claimed by the plaintiff, shall be treated from the date of filing of this application i.e. from 11.02.2019 and not from the date of filing of this suit.

Sd/-

(V.A.Awaghade)

Jt. Civil Judge Junior Division,  
Panhala.

Place:-Panhala.

Date:-18/03/2019.

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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.S.Patil
Name of Court	Shri. V.A.Awaghade
Date of Dictation	18/03/2019
Order signed by the P.O. on	21/03/2019
Order uploaded on	26/03/2019