



**Order below Exh. 76 in R. C. S. No. 188/2017**

**CNR-MHKO20000741-2017**

This is an application made by the plaintiff under order VI Rule 17 of the Code of Civil Procedure contending that the present suit is instituted for partition, relief of declaration and perpetual injunction. However, certain important pleadings and some of the properties remained to be included in the plaint, inadvertently. Therefore, the plaintiffs constrained to make present application. It is contended that the properties sought to be included in the plaint by way of amendment, are not partitioned yet by metes and bounds and the plaintiffs have their share in it. In order to determine the real question in controversy between the parties, to have the adjudication of the suit on merits and to protect an interest of the plaintiffs in the subject matter, the plaintiffs prayed to allow them to amend their plaint. The plaintiffs neither creating new case nor making inconsistent pleadings to the main pleadings. Therefore, to avoid multiplicity of the proceeding, the plaintiffs solicited permission to make necessary amendment in their pleadings.

2. Some of the defendants filed their say on overleaf of the application and defendants No. 6 to 12 and 15 filed their say at at Exh. 83. They have resisted the contention of the plaintiffs. It is specifically averred by them that the plaintiffs have no concerned with the properties sought to be included in the suit. The plaintiffs

have no legal right or share in those properties as they are not ancestral properties of the plaintiffs. The plaintiffs did not obtain valuation certificate from the sub-registrar regarding house property. As such, proposed relief claimed is under valued. The plaintiffs are well aware about the alleged transactions took place in the year 1997, 2001 and 2009. Therefore, relief claimed by the plaintiffs is time barred as per provisions of the Indian Limitation Act. In present suit, issues are already framed. Hence, application cannot be allowed. Time and again the plaintiffs are seeking amendment in their pleadings and causing delay in proceeding. If application is allowed, nature of suit including cause of action would be changed. On the aforesaid ground, the defendants urged to reject the application with compensatory costs.

3. From the contentions as above, following points arise for my consideration. I have recorded my finding to each point for the reasons to follow:

<u>POINTS</u>	<u>FINDINGS</u>
1. Whether proposed amendment is necessary for the purpose of determining the real questions in controversy between the parties ?	Yes.
2. What order ?	Application is allowed.

#### REASONS

4. Heard both the learned advocates for respective parties. The plaintiffs relied upon following judgments of the Hon'ble Bombay High Court :

1. Hari Shankar Singhania & Others....Plaintiff V/s.  
Gaur Hari Singhania(Dr.) & Others...Defendants  
Reported in 2003(1) ALL.M.R.548
  
2. Ashok Daga Patil....Petitioner. V/s Daga Yadav  
Patil & Others...Respondent  
Reported in 2003(3) ALL M.R.997
  
3. Basavanappa Bhimsha Koli @ Jamdar...Petitioner  
V/s Sunil Basavanappa Jidge...Respondent  
Reported in 2008(1) All. M.R.682

5. It is asserted by the plaintiffs that certain important pleadings and some of the properties remained to be included in the plaint, inadvertently. On the other hand, it is averred by the defendants that the plaintiffs have no concerned with the properties sought to be included in the suit. The plaintiffs have no legal right or share in those properties as they are not ancestral properties of the plaintiffs.

6. Admittedly, the suit is instituted for partition and separate possession of the properties. Considering the nature of suit i.e. partition, it is necessary to include all the properties in common hotchpotch. Certainly, it is incumbent on the plaintiffs to prove their share or right in the properties to be included as per proposed amendment. At this juncture, without giving opportunity to the plaintiffs, it cannot be said that they have no right in those properties. Rather, it is necessary to give fair opportunity to the plaintiffs to amend their plaint and adduce evidence thereon during

trial.

7. Thus, looking to the contentions in application for amendment in the light of averment in the plaint and considering ratio in the judgments on which the plaintiffs relied upon, it is seen that the amendment sought is bonafide and will not change nature of the claim. Also no prejudice would be caused to the defendants if proposed amendment is allowed as they have an opportunity to file their additional written statement on amendment. Considering the nature of the suit i. e. partition, it deems necessary to allow the plaintiffs to amend their pleadings. This Court is satisfied that proposed amendment is necessary for the purpose of determining the real questions in controversy between the parties and to avoid multiplicity of the proceedings. Hence, point No.1 is answered in the affirmative and to answer point No. 2, I proceed to pass following order.

**ORDER**

1. Application is allowed subject to costs of Rs. 300/- payable to the legal aid authority.
2. The plaintiffs to carry out necessary amendment as enumerated in the application within 14 days from this order.
3. The plaintiffs to supply sufficient copies of the plaint after carrying out amendment as above.
4. The plaintiffs to deposit necessary court fees on additional prayers to be added in plaint by virtue of this order.

Kale-Kheriwade.  
Date : 11/07/2019.

Sd/-  
( V. V. Khulape )  
Civil Judge J.D.,Kale-Kheriwade.

Affirm that, the contents of this P.D.F. file Order are same, word to word, as per the original Order.

Name of the Stenographer	A.V.Chougule.
Name of Court	Civil Judge, Junior Division & Judicial Magistrate, First Class, Kale (Kherivade).
Date of Dictation	11-07-2019
Order signed by the P.O. on	11-07-2019
Order uploaded on	18-07-2019