


MHLA050004152022	<u>Order below Exh.37 in Spl.C.S.No.56/2022</u>
	<u>Bhagirathabai W/o. Balaji Kature</u> <u>Vs.</u> <u>Namdev S/o. Mahadu Akangire & Ors.</u>

This is an application under Order-VI Rule-17 of the C.P.C.,1908 by the plaintiff. According to her, the suit is filed for partition and separate possession land bearing gat No.14 at village Thorlewadi is acquired for the National High-way and the compensation was granted of the acquisition. Defendant No.1 received the compensation and purchased some agricultural lands at village Shidagi (Kh.)and Mangdari, Tq. Ahmepur in the name of defendant Nos.3 and 2. So the plaintiff want to add those purchased suit properties in the suit.

2. The plaintiff also want to add total amount of compensation disbursed to defendant No.1 and pleading to that respect. The further amendments regarding valuation of the suit claim and stamp duty are also mentioned in the application. The plaintiff also want to add certain changes in the prayer clause. Therefore, it is prayed that, necessary corrections may be allowed in the plaint para Nos.3, 8A, 9A, 14A and in prayer clause para Nos.3 to 8.

3. Say is filed at Exh.40 by the defendants. According to them, they have no objection to amend the arithmetical and clerical mistakes in the plaint. But they have raised objection to incorporation of newly purchased land by defendant Nos.2 and 3.

So therefore they have contended that the application may be rejected with costs.

4. Heard learned Advocate for the plaintiff vehemently argued that, the award of compensation received by defendant No.1 is jointly owned by her. She has filed the suit for partition and separate possession. She has 1/5th share in the compensation. Defendants have utilized that amount to purchase properties and so she has claimed her share in those properties too.

5. Per contra, learned Advocate for the defendants argued that the plaintiff may claim share in the compensation amount and it may be given to her subject to proof but she cannot claim any right in the newly purchased properties. He further submitted that, he has no objection to cure defects of clerical mistakes.

6. Following points arose for my determination, I am reproducing them along with my findings thereon as under-

Sr. No.	POINTS	FINDINGS
1.	Whether the plaintiffs prove that, the amendment is necessary in the plaint ?	Partially in the affirmative.
2.	Whether the plaintiff is entitled for the relief ?	Partially in the affirmative.
3.	What Order ?	As per final order.

REASONS

As to point Nos.1 to 3:-

7. As per Order-VI Rule-17 of the C.P.C. parties in the plaint can file application to amend the pleadings and such amendment can be allowed by the Court in such manner and on such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real question on controversy between the parties.

8. The basic intention of Rule-17 is to give opportunity to the parties to avoid further suit or to avoid lack of defense and to avoid further litigation. So the application for amendment are to be construed liberally. Amendments go to the root of the suit, so precautions are required to be taken when there are technical issues involved like limitation, suit valuation etc.

9. In the matter on hand, the suit is filed for partition. The plaintiff has specifically claimed her $\frac{1}{2}$ share in the suit properties. She has contended that the same lands were acquired by the State for the construction of highway and she has $\frac{1}{2}$ share. The lands which are acquired are two plots adm.41R. The total compensation received for the acquired land is Rs.80,56,580/-. So that particular 41R land is now not in existence and the plaintiff or defendants are not its owners. Whether the plaintiff has right in the acquired land or not is not a question now but it is presumed that she has right in the acquired land. So at the most she can claim her share in the compensation amount. She cannot claim her share in the lands which are purchased subsequently, may be out of the

compensation amount or may be out of own income of defendant Nos.2 and 3.

10. The plaintiff, may be under presumption that if the newly purchased properties are not added in the suit it would become in fructuous. So is not the case because already the acquired land has gone from the possession of the parties and they have got the compensation. So the plaintiff can claim her share in the compensation and not in the newly purchased lands. So, therefore the amendment mentioned in application para Nos.5 and 3 cannot be allowed. Rest of the amendment in the application will not make difference on the merits of the case as they are related with the suit valuation and stamp duty. Therefore, I answer point Nos.1 and 2 partially in the affirmative and in answer to point No.3 I pass the following order-

ORDER

1. The application is partially allowed subject to observations made in the last para of the order.
2. Cost in the main cause.

Sd/-

(S.N.Sarde)

Date:19/07/2024.

Civil Judge Sr. Div., Ahmedpur.