

MHLA110000582016



ORDER BELOW EXH.133 IN
REGULAR CIVIL SUIT NO.71/2016
MANKARNABAI VS. ANTESHWAR & ORS.

1. This is an application under Order VI Rule 17 of the Code of Civil Procedure, 1908 for amendment in written statement.
2. Read the application and say filed thereon. Heard the Learned Advocate for both sides.
3. Ld. Counsel for the defendant submitted that, plaintiff has filed this suit for partition and separate possession regarding her share in ancestral and joint family properties of defendant. Defendant is illiterate and having no knowledge of law, inadvertently failed to mention the real facts and important information regarding defendant's relationship with plaintiff in her written statement. Therefore, it is prayed to grant permission to amend the written statement accordingly.
4. Ld. Counsel for plaintiff submitted that, defendant has already admitted her relationship with plaintiff in her W.S. Now, by way of amending her W.S. defendant want to withdraw the said admission after commencement of trial. Therefore, the application is not maintainable and it is out of limitation. There is no provision in law to withdraw the admission given in the WS. Hence, it is prayed to reject the application.
5. It is significant to note that Proviso to the Order VI Rule 17 of the Code of Civil Procedure, 1908, provides that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of the due diligence, the party could not have raised the matter before the commencement of the trial. In ***Vidyabai Vs. Padmalata reported in AIR 2009 SC 1433***, Hon'ble Apex Court has held that proviso to Order VI Rule 17, is coached in mandatory form. It is further held that the Courts jurisdiction to allow amendment application after commencement of trial is taken away unless conditions precedent are satisfied. It is further observed that filing

of an affidavit in lieu of examination-in-chief would amount to commencement of proceeding.

6. It is also well settled that, no amendment should be allowed which will cause any serious prejudice to the legal rights accrued to the other side by way of lapse of period of limitation. Moreover, in ***Harishankar Singhania & Oth. Vs. Gaur Hari Singhania & Ors. reported in MANU/MH/0482/2002***, the Hon'ble Bombay High Court held that where the Court feels that it is not possible to determine certainly and without evidence, on the face of the pleadings and material already on record, whether the proposed amendment is or is not barred by limitation, the Court may not shut out amendment. It is further held that where it is clear on the facts of the case that the plea raised by way of amendment is surely time barred on the date of application for amendment that the Court would refuse the amendment.

7. It is also well settled law that, admissions made in the pleadings like W.S. cannot be withdrawn through an amendment. When such withdrawals are pre-judicial to the opposing party and potentially undermining the integrity of legal process. The admissions once made are generally considering binding and can be a crucial part of the opposing parties case. However, if an admission was made due to a genuine mistake or on misunderstanding, a Court might considered allowing an amendment to clarify or explain the admission but not complete withdrawing.

8. In present case, defendant in her pleadings in para No.2 of the written statement, has admitted that there is no dispute regarding the relation of plaintiff and defendants. Defendant, by way of this application intends to delete the said sentence and also intends to give clarification regarding their relationship with plaintiff. Defendant proposed to add that, her sister Mankarnabai is died long before and after her death, husband of Manakarnabai i.e. Somnath Karvande remarried with Sushilabai and she has filed this case pretending that she is Mankarnabai. She is not having any concern with the suit property.

9. On perusal of records of the case it is seen that, defendants also have cross-examined plaintiff and her witnesses on the aforesaid point. The whole defence is based on the said fact. Therefore, it is clear that defendant could have amend his pleadings before the commencement of trial. Moreover, it is pertinent to note that some of the facts have already been incorporated in his written statement by defendant in previous amendment. Furthermore, as per settled law defendant cannot withdraw the admission already given.

10. Besides, plaintiff has closed his evidence and defendant examined four witnesses and is about to close his evidence. The application filed by plaintiff at belated stage and he could have raise this defence initially at the time of filing of his written statement. Therefore, it is clear that he could not raise the proposed amendment before the commencement of trial. Therefore, embargo contained in proviso to Rule 17 of Order VI of the Code of Civil Procedure, 1908 is applicable to the proposed amendment. If the proposed amendment is allowed, it will cause serious prejudice to the rights of plaintiff.

11. In view of above said facts and circumstances of the case, it will not be just and proper to allow the defendants to carry out the proposed amendment. Therefore, the present application is liable to be rejected. Accordingly, I pass the following order.

ORDER

Application at Exhibit No.133 is rejected.

Nilanga.
Dt.:- 17/07/2025

(Smt. V. D. Bhosale)
Jt. Civil Judge Sr. Dn., Nilanga.