

**R. C. S. No. 181/2008.****Kalubai Vs. Pandurang.****ORDER BELOW EXH.181.**

1. Plaintiffs have filed present application for amendment.

2. Heard learned counsel Shri. A. S. Makane for plaintiffs, learned counsel Shri. U. S. Jadhav for defendant Nos.1 and 8 and learned counsel Shri. D. R. Dad for defendant No.35. Rest of the defendants and their counsel remained absent. In view of the submissions of counsel of both the parties, following points arise for determination of this court. Findings and reasons thereon are as under :-

|    | <b><u>P O I N T S</u></b>                                       |   | <b><u>F I N D I N G S</u></b> |
|----|-----------------------------------------------------------------|---|-------------------------------|
| 1) | Whether proposed amendment changes nature of the suit ?         | : | In the affirmative.           |
| 2) | Whether plaintiffs are entitled to amend the plaint as prayed ? | : | In the negative.              |
| 3) | What order ?                                                    | : | As per final order.           |

## REASONS

### Point Nos.1 & 2 :-

3. Learned counsel for plaintiffs submitted that plaintiffs have filed present suit for partition and separate possession of the suit property against defendant No.1 and others. Suit property was owned by Govind Ghadge. He is father of plaintiffs and defendant Nos.1 and 2. Defendant No.1 has pleaded in his W.S. that he sold portion of the suit property to near-about 200 persons. Till this time, plaintiffs have joined 34 persons as defendants. They have challenged the sale-deeds executed in their favour. However, plaintiffs could not come to know the names of other purchasers. This court has framed issue of non-joinder of necessary parties. Therefore, plaintiffs be permitted to convert the present suit into a representative suit, as per Order I Rule 8 of C.P.C. Plaintiffs are ready to bear necessary charges of publication. Hence, accordingly, plaintiffs be permitted to amend the plaint as stated in the application.

4. Application is objected by defendants' counsel on the ground that plaintiffs have not sought permission to file the suit in representative capacity. Now, they want to change nature of the suit. It is not impossible for plaintiffs to collect the names of the purchasers from Sub-Registrar, Nilanga. Suit is filed in the year 2008. Since then four years have been passed. It is not brought on record that plaintiffs made efforts at the Sub-Registrar Office, Nilanga, in spite of this, they failed to obtain the names of the

purchasers. Application is not bonafide. It changes nature of the suit. Therefore, application be dismissed.

5. Learned counsel for plaintiffs placed reliance on the decision of Hon'ble Apex Court. It is delivered in **The Chairman, Tamil Nadu Housing Board, Madras Vs. T. N. Ganapathy (AIR 1990 SUPREME COURT 642)**. In said case, it has been observed as under :-

“7. ... The provisions of O. 1 R. 8 have been included in the Code in the public interest so as to avoid multiplicity of litigation. The condition necessary for application of the provisions is that the persons on whose behalf the suit is being brought must have the same interest. In other words either the interest must be common or they must have a common grievance which they seek to get redressed. In Kodla Goundar v. Velandi Goundar, ILR (1955) Mad 335 : (AIR 1955 Mad 281), a Full Bench of the Madras High Court observed that on the plain language of O. 1, R. 8, the principal requirement to bring a suit within that Rule is the sameness of interest of the numerous persons on whose behalf or for whose benefit the suit is instituted. The Court, while considering whether leave under the Rule should be granted or not, should examine whether there is sufficient community of interest to justify the adoption of the procedure provided under the Rule. The object for which this provision is enacted is really to facilitate the decision of questions, in which a large number of persons are interested, without recourse to the ordinary procedure. The provision must, therefore, receive an interpretation which will subserve the object for its enactment. There are no words in the Rule to limit its scope to any particular category of suits or to exclude a suit in regard to a claim for money or for injunction, as the present one.”

6. He also placed reliance on the decision of Hon'ble Apex Court. It is delivered in **Maharashtra Vikrikar Karamachari Sangathan Vs. State of Maharashtra and another (AIR 2000 SUPREME COURT 622).** In said case, a petition was filed challenging the promotion of the Sales Tax Officers. It was held that decision given in a petition would bind all the promotees who were similarly situated.

7. In **Chintaparthi Venkataramana Reddy Vs. Nallam Rajamma and another (AIR 1988 ANDHRA PRADESH 40),** Hon'ble Andhra Pradesh High Court observed as under :-

“2. Sri N. Ramamohan Rao, the learned counsel for the respondents, contended that in view of the abnormal delay of two years in seeking the amendment of the plaint, the plaintiff would have waived his right to compensation or damages for use and occupation of the suit premises and, as such the amendment sought for has been rightly rejected by the lower Court. There is no substance in this contention raised by the learned counsel. The Court has no power to consider the merits of the proposed amendment at the stage of consideration of the question whether the amendment should be allowed. Rule 17 of O. VI, C.P.C. confers a wide discretion upon the Courts to allow the amendment of pleadings at any stage of proceedings, and a Court is not unjustified where it allows the amendment of the pleadings even after the issues have been struck, the evidence of parties has been taken and their case has been adjourned for arguments. Amendments are allowed at very late stage, sometimes even at the appellate stage. Therefore a prayer for amendment cannot be branded as mala fide on the mere ground that it is made at a late stage or that by reason of such a prayer the court is inconvenienced. I am told that the trial of the suit in this case has not yet commenced.”

8. In Maitreyee Banerjee Vs. Prabir Kumar Mukherjee (AIR 1982 SUPREME COURT 17), Hon'ble Apex Court observed as under :-

“1. ... We are satisfied that this is not a case where the amendment would work serious injustice to the respondent. The High Court in its power of revision ought not to have interfered in a case like this as no jurisdictional error was involved. This was not a case where the amendment sought was clearly barred by limitation so as to cause an irreparable injury to the respondent....”

9. Relying on the aforesaid decisions, learned counsel for plaintiffs submitted that defendant No.1 has executed various sale-deeds in favour of more than 200 persons. It is difficult for the plaintiffs to collect the name of those purchasers. Those purchasers are interested in the present suit. Plaintiffs want to convert the present suit as representative suit. At this stage, it is not necessary to go into merits of the application. Amendment can be allowed at any stage of the proceeding. Therefore, application be allowed.

10. It is important to note that plaintiffs have filed present suit for partition and possession of their share in the suit property. Defendants have challenged the status of plaintiff No.2. Plaintiffs are coming with case that defendant Nos.1 and 2 are their brothers and they are issues of Govindrao Ghadge. However, defendant No.1 has challenged the status of plaintiff No.2 and defendant No.2. He is also coming with case that plaintiff No.2 and defendant No.2 have created illegal sale-deeds in favour of defendant Nos.9 to 12. Those are excluded from the present suit.

He has sold the property as Karta of the joint family. Therefore, plaintiffs cannot convert present suit into representative suit.

11. By virtue of proposed amendment, plaintiffs want to convert present suit into representative suit. In the opinion of this court, such course is not permissible under the law. No doubt, in order to avoid multiplicity of the proceeding, amendment can be allowed at any stage of the proceeding. However, it does not mean that parties can be permitted to convert nature of the proceeding. Defendant No.1 has specifically averred that he sold the suit property for legal necessity. All the sale-deeds may have been registered in the Sub-Registrar Office, Nilanga. It was not impossible for plaintiffs to collect their names.

12. In The Chairman, Tamil Nadu Housing Board's case ( *supra* ), the houses were allotted to the people under one scheme. In that factual matrix, it has been observed that if there is a common grievance, then to meet such grievance, some of the parties can file representative suit. However, in the present case, purchasers have not registered sale-deeds on one day. Defendant No.1 has executed sale-deeds in favour of various people on different dates. Therefore, the ratio laid down in said case is not applicable to the facts and circumstances of the present case.

13. The proposed amendment changes nature of the suit. Therefore, this court does not think it proper to allow the plaintiffs to amend the plaint as prayed by them. Hence, plaintiffs are not entitled to amend the plaint.

14. It is important to note that prior to this, plaintiffs have amended the plaint at four times. The suit is filed in the year 2008. Suit is ready for hearing. However, plaintiffs are not ready to conduct the suit. They have not acted due diligently. Therefore, on this count also, plaintiffs are not entitled to amend the plaint. In the result, this court answer point No.1 in the affirmative and point No.2 in the negative and pass following order :-

**ORDER**

Application is rejected.

Date : 04.03.2014.

( S. R. Tamboli )  
Civil Judge Senior Division,  
Nilanga.

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