

ORDER BELOW EXH. 44

(Passed on : 21.01.2020)

01. Present application is filed by the plaintiff under Order VI Rule 17 of the Code of Civil Procedure.

02. In short, it is the contention of the plaintiff that his father sold out the land in survey No. 86-B at Ansarwada and purchased the suit property. So also, after the death of plaintiff's mother, defendant No.1 was not properly looking after him. Therefore, he was residing at her matrimonial uncle's house. Due to illiteracy he could not give information about the same to his Advocate. Therefore, it is necessary to amend the plaint as mentioned in para No. 2-अ and 2-ब of the application. It will not change the nature of suit. Defendants will not suffer the loss. Hence, prayed to allow the application.

03. Defendant No. 1 & 4 to 9 filed say and opposed the application contending that due to proposed amendment nature of suit will be changed. The plaintiff has not sought the partition of land in Gat No. 86/B and not added the purchaser. Suit property is not the ancestral property. False application is filed to harass them. Hence, prayed to reject the application.

04. Heard both the parties. Perused the pleadings in the plaint. In para No.1, it is pleaded that suit property was owned and possessed

by Maruti Usnale. It is further pleaded in the plaint that the suit property is the ancestral property, therefore, plaintiff is having share in it. If this specific contention in the pleading is taken in to consideration, then, there is no hurdle to allow the amendment as sought by way of para No. 2-अ of present application. This amendment will not change the nature of suit nor cause any loss to the defendants.

05. So far as proposed amendment as sought vide para No. 2-ब of the application is concerned, the plaintiff wants to delete the pleading that he has been illegally ousted from the ancestral property. If the said pleading is deleted and new pleading as contended came to be added, it will cause prejudice to the rights of the defendants because withdrawing the pleading of ouster amounts to withdrawing the admission. It will change the pleading and defendant will suffer heavy loss. Therefore, said amendment cannot be allowed.

06. So far as addition of party and property is concerned, that will be part of trial and effect of it will be considered at the time of final order. That can not be a hurdle to decide the present application. considering all these things, the application deserves to be partly allowed. Hence, I pass the following order,

ORDER

1. Application is partly allowed.
2. The plaintiff is permitted to carry out the amendment as per para No. 2-अ of the application.

3. Prayer of amendment as mentioned in para No. 2-ब in the application is rejected.
4. The plaintiff shall pay the cost of Rs. 500/- to defendants.
5. The plaintiff shall carry out the amendment and file the amended plaint for the Court and copies thereof for the defendants.

Nilanga.
Dated : 21.01.2020.

Civil Judge Senior Division,
Nilanga.