

**Order Below Exh.94 in RCS No.107/2015**

**Malanbi Vs. Sardar**

This is an application filed by plaintiff under Order VI Rule 17 CPC for granting permission to carry out proposed amendment in the plaint by disclosing four boundaries of all the suit properties and proper measurement of one of the suit property bearing old House property No.63/1 having new H.P. No.67/1, on the grounds stated in the application. Defendant Nos.2 and 3 to 5 have filed their say and raised strong objections. Defendant No.9 failed to file her say. Perused application and say. Heard both the sides. Both of them have submitted in the line of their application and say respectively.

2. Record shows that plaintiff has filed this suit for partition and separate possession. Defendant Nos. 1 and 2 have filed their WS at **Exh.33**, defendant Nos.3 to 5 have filed their WS at **Exh.36** and defendant No.9 has filed her WS at **Exh.84**. Issues are framed at **Exh.87** on 13/02/2020 and plaintiff has examined herself as PW.No.1 by filing her affidavit of chief examination at **Exh.88** on 06/02/2021. This means, the trial has been commenced. The plaintiff ought to have moved this application at the earliest possible opportunity. There is no due diligence on the part of plaintiff. However, considering the nature of suit and the relief claimed, in my opinion, it is necessary to permit the plaintiff to carry out proposed amendment in the plaint. No prejudice will be caused to any of the defendants, if the application is allowed because they will have an opportunity to file their additional WS. However, while doing so, the delay of approximately seven years caused by plaintiff cannot be neglected and for that purpose it is necessary to saddle cost on plaintiff. For these reasons, I pass following order:-

**Order**

1. Application is allowed, subject to cost of Rs.1500/- each to be payable by plaintiff to defendant Nos.2 and defendant Nos. 3 to 5 collectively.

2. After the payment of cost amount and after its acknowledgment by defendants, the plaintiff is permitted to carryout proposed amendment in the plaint, as sought.
3. Plaintiff shall supply copy of amended plaint to the Court and to the defendants at the earliest.
4. Defendants are at liberty to file their additional WS, if any.

*Order dictated and pronounced in open court.*

Date :29/08/2022

(Ashish B. Marlecha)  
Civil Judge (Sr.Dn.),  
Nilanga, Dist. Latur.