

Order below Exh. No. 51

The present application is filed on behalf of the plaintiff under the provisions of Order VI Rule 17 of the C.P.C.

2. The Ld. Advocate for the plaintiff submitted that the plaintiff was not party to the RCS No. 189/2006. The decree in the said suit was passed behind back of the present plaintiff. The plaintiff is an illiterate person. Therefore, the plaintiff could not plead about the decree passed in RCS No. 189/2006 in her plaint. Therefore, the plaintiff seeks to amend and add to the plaint paragraph(5/A), and in column of relief paragraph (1/A), as mentioned in the application.

3. Ld. Advocate for the defendant no.2 resisted the application contending that The defendant no.2 has filed his written statement on 28/02/17. In his written statement the defendant no.2 has stated about the decree passed in RCS No. 189/2006. The plaintiff has filed her affidavit in lieu of examination in chief at Exh.37 on 01/03/18. The plaintiff has been cross examined. Thereafter plaintiff has examined another witness at Exh. 42. Ld. Advocate for defendant no.2 has further argued that the issues have been framed and the evidence of the plaintiff has been recorded. The proposed would change the nature of the suit. Therefore Ld. Advocate for the defendant no.2 has prayed for the rejection of application.

4. Perused the record, read the application and the say. The suit

has proceeded without written statement of the defendant no.3. The defendants no.1 and 5 failed to file say to the present application. The suit has proceeded ex parte against defendant no.4. Heard Ld. Advocate for the plaintiff and Ld. Advocate for defendant no.2. Perused the pleading. The plaintiff has filed the present suit for partition and separate possession of the suit property. By way of present application, the plaintiff seeks to amend the plaint to include the pleadings about the decree passed in RCS No. 189/2006.

5. Order VI Rule 17 of the C.P.C.1908 provides that

The court may at any stage of the proceeding allow either party to alter or amend his pleadings in such manner 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 questions in controversy between the parties:

provided that no application for amendment shall be allowed after the trial has commenced unless the court comes to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of trial.

6. The present suit is for partition and separate possession. It is to be noted that the defendant no.2 has filed his written statement at Exh.24. The W. S. at Exh. 24 speaks about RCS No. 189/2006. Therefore, the plaintiff has knowledge about decree from 28/12/17 i.e. from the filing of written statement at Exh. 24. The plaintiff has filed the present application after recording of evidence of the two witnesses. Hence the present

application is filed belatedly. However, it is to pertinent to note that the legality and validity of the decree passed in RCS No. 189/2006 is the crux of the matter. Though the plaintiff has sought the amendment after the commencement of trial, no new case is introduced by the plaintiff. The amendment sought is in consistency with the pleading of the plaintiff. No prejudice will be caused to the rights of the defendant no.2 if the amendment is allowed. It is the settled position of law that an application for amendment of plaint filed belatedly cannot be refused if it is found that the amendment is necessary for deciding real controversy between the parties. Such amendment can be allowed on payment of costs. Hence for the just and proper adjudication of matter on merits and to avoid multiplicity of proceedings, it would be just and appropriate to allow the amendment. Nevertheless, the inconvenience caused to the defendant no.2 can be compensated by saddling the cost on the plaintiff.

7. Hence I proceed to pass following order:

ORDER

- 1) Application is hereby allowed.
- 2) The plaintiff to carry out proposed amendment within 14 days from the date of this order subject to the costs of ₹1500/- (Rupees One Thousand Five Hundred Only) to be paid to the defendant no.2.

Place: Ausa
Date: 29/07/19

(Smt. P.R. Kulkarni)
2nd Jt. CJJD, Ausa