

R.C.S. 799/2017

Sushila + 2 Vs. Ramesh + 4

ORDER BELOW EXH. 40
CNR No.MHLA140021892017

The present application has been filed by defendant no.1 for amendment in his written statement (Exh.17) under Order VI Rule 17 of Code of Civil Procedure. Perused the application and say filed by plaintiffs. Heard both at length.

2. By way of the present application the defendant no. 1 contended that he wish to carry out amendment in his written statement that necessary parties in the suit and by adding pleading as paragraph no. 1 to 8 in the instant application.

3. The plaintiffs filed their say. They objected on the ground that the proposed amendment is contrary to the pleading. The defendant is not diligent. The plaintiffs have filed their evidence affidavit. Hence, they prayed that the application may kindly be rejected.

4. Heard learned advocate Shri. G. V. Suryawanshi for defendant no. 1 and learned advocate Shri. P. V. Kohale for plaintiffs.

5. Perused record. The plaintiffs filed suit on 07/11/2017. Defendant no. 1 filed his written statement vide (Exh.17) on 29/10/2021.

6. As far as the amendment relating to other sisters and brothers of deceased Ramling is concerned, there is no pleading of either party that the suit property was ancestral property of deceased Ramling or there was no partition between Ramling and his brothers. Further, there is no claim by defendant no. 1. Hence, the proposed amendment relating to addition of brother and sister of deceased Ramling is not necessary in order to adjudicate the matter on merits.

7. Further, defendant no.1 contended that deceased Ramling had another wife namely Jivanabai and Jivanabai has one daughter namely Suglabai. Further, plaintiffs and defendant no.1 have other two sisters and two brothers which are not added as necessary parties in the present suit by plaintiffs. Therefore, defendant no. 1 wants to amend his written statement to that effect. Furthermore, defendant no. 1 wants to amend his written statement relating to the source of suit property that was purchased by his father in law on the condition to marry his daughter.

8. The plaintiffs filed evidence affidavit on 23/11/2021. The matter is pending for further evidence of plaintiffs. The defendant no. 1 wants to add facts which occurred before institution of present suit by way of amendment. The defendant no. 1 could have pleaded those facts in his pleading already. Hence, defendant no. 1 is not diligent. If, application is allowed

then it will cause prejudice to the plaintiffs. Hence, in the result following order will meet the end of justice.

ORDER

1. The amendment application at (Exh.40) is rejected.
2. Costs in cause.

Ausa.
Date: 31/01/2023.

(P.D.Kolekar)
Jt. Civil Judge J. D., AUSA.