

:: Order below Exh. 58 in Reg. Civil Suit No. 05/2011 ::

01. This is an application under Order-VI, Rule-17 of the Code of Civil Procedure filed by defendant No. 5.

02. In short the contention of the defendant No. 5 is that, the plaintiffs have filed this suit for seeking relief of partition in respect of land admeasuring 1 H. 20 R. out of survey No. 5/1 and land admeasuring 1 H. 05 R. out of survey No. 13/3 situated at village, Anandwadi Tq. Deoni. The defendant No. 5 has filed his written statement at Exh. 23. The suit came to be disposed off after recording evidence of the plaintiffs and accordingly, the defendant No. 5 preferred Reg. Civil Appeal No. 16/2015, wherein the suit is remanded for giving an opportunity of adducing evidence to him. Now, the defendant No. 5 has engaged a new advocate. In his written statement, he has specifically raised a defence that, the property purchased by him is self acquired property. However, by mistake the previous transactions of the property purchased by him are remained to be mentioned. Said mistake is not an intentional one. However, in order to adjudicate the matter on merits, it has become essential for him to amend his written statement and give the details of previous transactions in respect of the property purchased by him. He has further contended that, the proposed amendment would not change the nature of his defence nor it is prejudicial to the rights of adversary. Accordingly, he has prayed for allowing the application.

03. The plaintiffs by filing their say at Exh. 60 resisted

the application. As per their contention, the matter is already adjudicated and as per the order in the appeal, it is remanded only for giving an opportunity to the defendant No. 5 for cross-examining the witnesses of the plaintiff and adducing his evidence. However, the defendant No. 5 without cross-examining the witnesses and adducing his evidence, is intending to amend his written statement, which is nothing but an attempt of filling up of the lacuna. However, the defendant No. 5 can not be permitted to do so. As per their further contention, the defendant No. 5 is intending to take undue advantage of the fact that, the matter is remanded and he is intending to prolong the matter. On all these counts, they have prayed for rejection of the application.

04. Heard both sides. Both the learned advocates reiterated the contentions in the application and say respectively during the course of arguments.

05. Perused record. Perusal of record shows that, the present suit is filed for seeking relief of partition and separate possession. In this matter, the defendant No. 5 alone has contested the suit by filing his written statement at Exh. 23. It is also significant to note here that, my learned predecessor after recording the evidence of the plaintiffs and after giving opportunity to the defendant No. 5 to adduce his evidence, decided the matter. It is also pertinent to note that, the defendant No. 5 preferred Reg. Civil Appeal 16/2015 against the decision of my learned predecessor, wherein the Hon'ble District

Court, Udgir has remanded the matter with direction to give sufficient opportunity of cross-examining the witnesses of the plaintiff to defendant No. 5. However, before cross-examining the witnesses of the plaintiff, this application is filed by the defendant No. 5.

06. Apart from this history of this matter, it is essential to mention here that, the defendant No. 5 has raised a defence in his written statement that, he had purchased the property out of survey No. 5/1 under a registered sale-deed and accordingly, his name is mutated in the revenue record. However, while looking at the proposed amendment, it appears that, the defendant No. 5 is intending to give details regarding the previous transactions of the suit property prior to purchasing the same by him. While looking at the defence raised by the defendant No. 5, it appears that, the proposed amendment is nothing but a clarifactory amendment, which is giving more and better particulars regarding the transactions in respect of the suit property.

07. While looking at this nature of the proposed amendment, it appears that, it is not prejudicial to the rights of the plaintiffs nor it will change the nature of the defence. As far as the contention of the plaintiffs regarding filling up of lacuna is concerned, there appears no substance in their contention as the amendment appears to be clarifactory in nature. As far as the contention of the plaintiffs regarding delay is concerned, it can very well be compensated in terms of costs. Considering all

these aspects, following order is passed.:

:: Order ::

- 1) The application is allowed subject to cost of Rs. 2,000/- (Rs. Two Thousand only), half of which to be deposited in Court for State and rest be paid to the plaintiffs.
- 2) The defendant No. 5 to carry out the proposed amendment within stipulated period of 14 (Fourteen) days by complying with cost condition and file amended copy of written statement without further delay and conduct the matter expeditiously.
- 3) Cost condition precedent.

Sd/-

(D.P. Kasat)

Date : 29-06-2017.

Civil Judge Jr. Division,

Deoni.

I affirm, the contents of P.D.F. file Order are correct word for word as per the original Order.

Name of the stenographer : M.Y. Wadiwale.
Name of Court : Civil Court, Jr. Divn., Deoni.
Date : 29-06-2016.