

R.C.S. No. 46/2017
Kalya Vs. Vijari

ORDER PASSED BELOW EXH. 22

(Passed on 11.02.2019)

By this application plaintiff has sought permission to amend the plaint under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (hereinafter referred as 'Code'). Defendants have objected the present application. Heard Ld. Advocates for parties.

2. Read the application. It is contended that, due to oversight and typing mistake, plaintiffs have mentioned age of defendant no. 3 Subhash Virya Bhil and defendant no. 4 Ganesh Virya Bhil as major but both these defendants are minor and hence plaintiffs have moved present application for amendment of age of said defendants and to add their mother Vela Virya Bhil as guardian in nomenclature of present suit. The application is objected on the ground that it will change nature of present suit.

3. Following points arise for the determination and findings thereon are recorded with reasons stated hereinafter.

Sr.No.	Points.	Findings.
1.	Whether the proposed amendment can be allowed?	Yes.
2.	What order ?	As per final order.

REASONS

AS TO POINTS NO. 1 & 2

4. Ld. Advocate on behalf of plaintiff Shri. S.K. Tatiya submitted that, the proposed amendment will not change nature of the suit and the amendment is only to correct typing error.

5. Order 6 Rule 17 of the Code provides for two situations, Firstly application for amendment before commencement of trial and application of amendment after commencement of trial. The said rule itself provides that, pleadings can be amended at any stage of the proceedings. Further proviso of the rule 17 provides that, amendment application can be allowed after trial only when the court comes to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of the trial. It is settled law that if application is filed before commencement of trial the court should be liberal while allowing the same.

6. Perused record. Plaintiff has filed suit for partition and separate possession. It reveals that the present application is filed before commencement of trial. It is also necessary to note that the plaintiff vide present amendment application want to bring fact of minority of defendant no. 3 Subhash and defendant no. 4 Ganesh on record. The said amendment in nomenclature will not change nature of the present suit and as it is filed before commencement of trial it can be allowed. Hence, I proceed to following order.

ORDER

1. The application is hereby allowed.
2. Plaintiff to carry out amendment in the plaint on or before next date.

Dhadgaon
Date : 11.02.2019

Sd/-
(P. H. Joshi)
Civil Judge J.D., Dhadgaon
At. Dhadgaon.

Certificate

I certify that the contents of this PDF File are word to word as per original order.

Name of the Steno :- Mayur Nandakishor Ahirrao

Name of the Court :- Civil Judge J.D. & J. M. F.C.,
Dhadgaon

PDF Uploading Date :- 12.02.2019

Sd/-
(Mayur N. Ahirrao)
Stenographer(L.G.)