


MHNG080000562018 	<b>R.C.S. No.56/2018</b> <b>Manish &amp; Others Vs. Arpit &amp; Others</b>
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**ORDER (BELOW EXH.24)**

**( Passed on 20.10.2023)**

The plaintiffs have filed present application under Order VI Rule 17 of the Code of Civil Procedure (for short 'the C.P.C.') for amendment of plaint.

2. It is contended that the plaintiffs have filed this suit for partition, declaration and injunction. Defendants No.1, 2, 4 and 5 in their written statement have stated that the original owner of suit property was Laxmichand Matadin Agrawal and he has four sons and two daughters and they are necessary parties to the suit. The plaintiffs have claimed equal share in the suit property. In the suit for partition, the defendants are also plaintiffs. The plaintiffs have filed separate application for adding proposed plaintiffs and defendants (who are legal heirs of Laxmichand Agrawal) as parties to the suit. The plaintiffs want to make necessary pleadings regarding proposed parties. The plaintiffs want to add para No.8-A to 8-D and area of suit property as mentioned in the para No.3 and 4 of present application. The proposed amendment is necessary for proper adjudication of the suit. It will not change the nature of suit. No prejudice would be caused to the defendants if the proposed amendment is allowed. The plaintiffs will

suffer irreparable loss if the application is rejected. Hence, prayed to allow the application.

3. Defendants No.1, 2, 4 and 5 have filed their reply at Exh.38. It is contended that the plaintiffs have not standing on its own footing. The plaintiffs are trying to amend the pleading on the basis of written statement of the defendants. The plaintiffs are trying to fill up lacuna by way of proposed amendment. The proposed amendment is not subsequent development. The plaintiffs were having full knowledge about the facts before filing the suit. Hence, prayed to reject the application.

4. Heard the learned Advocate for the plaintiffs. He submitted as per contentions mentioned in the application. The learned Advocate for the defendants was absent when called out repeatedly for hearing, hence, the application proceeded without hearing of the defendants.

5. Perused the plaint. It shows that the plaintiffs have filed this suit for partition, declaration, and injunction. Defendants No.1, 2, 4 and 5 appeared in the suit and filed their written statement on record at Exh.23. Defendant No.6 filed written statement on record at Exh.41. The issues are framed at Exh.45. Record shows that application for grant of temporary injunction is still pending. The present application was filed immediately after filing written statement on record, but it seems that inadvertently this application was remained to be decided. For proceeding further in the suit, it is necessary to decide all

interlocutory applications. The evidence of the parties yet not commenced in the suit. It is settled principle of law that amendment can be allowed if it is based upon the subsequent developments. But looking to the nature of the suit i.e. suit for partition, all necessary parties are must to add in the suit in order to avoid future complication and by way of proposed amendment the plaintiffs want to add necessary pleadings in respect of proposed parties and want to correct area of the suit property. Therefore, the proposed amendment is necessary for proper adjudication of the suit on merit. It will not cause prejudice to the defendants. It will not change nature of the suit. Hence, there is no hurdle to allow the application because trial is not yet commenced. Thus, the application deserves to be allowed. Looking to the nature and age of the suit, it will be just and proper to direct the parties to bear their own costs and expedite the suit. Hence, I pass following order.

**ORDER**

1. Application (Exh.24) is allowed.
2. The plaintiffs are directed to carry out proposed amendment as mentioned in para 3 and 4 of the present application in the plaint within stipulated period and file amended copy of the plaint forthwith.
3. Parties to bear their own costs and expedite the suit.

Date:-20.10.2023

( R.R. Sherekar )  
2<sup>nd</sup> Jt. Civil Judge Junior Division,  
Kamptee, Dist. Nagpur.