

**RCS No. 161/2012****Kisnabai Vs. Suryaprakash & ors.****ORDER BELOW EX. 50**

(Passed on 11/01/2016 )

1. The defendant No. 1 has filed application under **Order 6 Rule 17 of Civil Procedure Code** for amendment in the written statement. The plaintiff has filed her reply at Ex. 51 and opposed the application.

2. Heard counsels for both parties. Adv. Pongde on behalf of defendant No. 1 submitted that after engaging him as a counsel, he suggested defendant to bring documents but as defendant No. 1 being in service at Yetapalli could not collect documents and hand over the same to his counsel as such could not file application within time. After getting documents when he perused them it appeared that some material facts have not pleaded in written statement therefore he wants to amend written statement in respect of those documents. Further he stated that documents show that suit fields Gat No. 83 , 84/2 and 86 of Mouja Dahegaon and field Gat No. 222 of Mouja Sayaki are the self acquired properties of deceased Narayan and Gat No. 37 of Mouza Paradgaon was obtained by Narayan during his life time by virtue of Will Deed dated 23/6/1962. In the year 1974 partition was took place between Narayan, Chandraprabha and Kisnabai and Gat No. 84 was given to the share of plaintiff Kisnabai, while Gat No. 86 was allotted to share of Chandraprabha and Gat No. 82/1 was allotted to share of deceased Narayan. Subsequently Gat No. 84 and 86 acquired by Government of Maharashtra in the year 2002 and deceased Narayan in the year 1981 has allotted Gat No. 222, and 147 in favour of defendant No. 1 and Narayan executed Will Deed

of Gat No. 82/1 in favour of defendant No. 1. Thereafter Gat No. 137 sold by defendant No. 1 to Shri Namdeorao on 15/3/2005. The defendant No. 1 has filed documents in this respect therefore amendment be allowed. On the contrary, the counsel for plaintiff argued that since 2012 defendant No. 1 did not file these documents and not moved amendment application. The reason mentioned in application for the delay is not reliable and therefore application is liable to be rejected with costs.

3. On the rival contentions of both parties, following points arose for my determination and I have recorded my findings with reasons against them as follows :

<b>Sr. No.</b>	<b>Points</b>	<b>Findings</b>
1.	Whether proposed amendment changes nature of defence?	..In the Negative.
2.	Whether the amendment application has been filed after commencement of trial ?	..In the Affirmative.
3.	What order ?	Application is allowed.

### **REASONS**

#### **As to point No. 1 :-**

4. The present suit is for partition, separate possession and permanent injunction. The defendant No. 1 has filed his written statement vide Ex. 15 on 24/1/2008. In that written statement he has pleaded that the suit property is the self acquired property and shares to the plaintiff and defendant No. 2 have

been allotted in agricultural land and their shares have been acquired by Government of Maharashtra, but detailed description of each property has not been mentioned. Now through proposed amendment the defendant No. 1 wants to clear the status of each property with the support of documents. In such circumstances, it can not be said that the proposed changes the nature of defence or suit. Accordingly I hold that the proposed amendment does not change the nature of suit and answer this point in **negative**.

**As to point No. 2 :-**

5. In present matter the issues have been framed on 14/7/15. i.e. the trial has been commenced. In such situation it is required to show the due diligence by the parties who wants to amend pleading. Present application has been filed by defendant No. 1 on affidavit and submitted that he was serving at Yetapalli and therefore as per suggestion of his counsel he could not collect documents immediately. The revenue documents alongwith list Ex. 56 bears the signature of Talathi showing date 19/9/2014. The present application has been filed by the defendant on 8/12/15 i.e. after three months from the date of receiving documents. This period is not a long period and from this period, the court can rely upon the reason given by defendant No. 1 in his application for delay in submitting amendment application in the court. Accordingly the defendant No. 1 has satisfied this court about due diligence in moving present application. In such circumstances, though the present application has been moved at belated stage only on the ground of delay, it can not be rejected. Accordingly, I answer this point in **affirmative**.

**As to point No. 3 :-**

6. In view of discussion and findings as to point No. 1 and 2, it appears that the propose amendment is necessary for the purpose of determining the real question in controversy between the parties and if application is allowed no prejudice would be caused to the plaintiff. In such circumstances, the court may at any stage of the proceeding allow either party to alter or amend the pleading. Hence, I proceed to pass following order.

**ORDER**

1. Application is allowed subject to costs of Rs. 100/- only.
2. The defendant No. 1 to carry out proposed amendment in his written statement within 14 days from the date of order without fail.
3. Plaintiff is at liberty to carry out consequential amendment in plaint.

Umrer.  
Dt. 11/01/16

(Ms.V.R.Jambhule)  
Civil Judge, Umrer.