

**RCS No. 161/12****Kisnabai Vs. Suryaprakash Ors.****ORDER BELOW EX. 58**

(Passed on 08/06/2016)

1. The plaintiff has filed application under **Order 6 Rule 17 of Civil Procedure Code** for amendment in the plaint. The defendant has filed his reply on the same application.

2. The counsel for plaintiff submitted that during the pendency of the suit defendant No. 1 amended the written statement and in view of said amendment plaintiff wants to carry out consequential amendment. By way of amendment defendant brought on record that out of suit property some property have been sold out and the property field Gat No. 82/1 has been bequeathed in the name of defendant No. 1 by way of Will Deed dated 1/7/1989. Through this amendment, the plaintiff wants to challenge those sale deeds and Will deed and in this respect he wants to carry out amendment. On the other hand, the counsel for defendant No. 1 submitted that through this application, the plaintiff has brought new facts on record which changes the nature of the suit. Therefore application be rejected.

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 suit ?	No.

2. Whether the amendment application has been filed after commencement of trial ? Yes.
3. What order ? Application is allowed.

### REASONS

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

4. After going through contents of application it appears that plaintiff has claimed declaration that sale deed dated 15/3/2005 of field Gat No. 137 and mutation entries of field Gat No. 137 and 222 are not binding upon him as well as he also challenged Will deed dated 1/7/1989 regarding field Gat No. 82/1 by submitting that it is sham and bogus and its mutation entry no. 56 dated 1/7/94 is not binding upon him. Also he submitted in this application that he has 1/3<sup>rd</sup> share in the suit property and prayed for insertion of 1/3<sup>rd</sup> share instead of 1/4<sup>th</sup>.

5. After careful scrutiny of contents of this application I do not find any substance in the submission made by counsel for defendant No. 1. However, I arrived at the conclusion that the proposed amendment does not change the nature of suit therefore I answer this point in **negative**.

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

6. After going through record, it appears that the issues have been framed at Ex. 42 on 14/07/15 i.e. trial has been commenced. From this it is clear that, the present application has been filed after the commencement of trial. Hence I answer this point in **affirmative**.

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

7. The court may at any stage of proceedings , allow either party to alter or amend his pleadings in such manner and in such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties. In this matter, already in discussion of point no. 1, the court has come to the conclusion that the proposed amendment does not change the nature of suit and if application in this respect is allowed, no prejudice would be caused to the other side. Though the Proviso of order 6 Rule 17 says that no application for amendment can be allowed after the trial has commenced unless the court comes to the conclusion that inspite of due diligence the party could not raised the matter before the commencement of trial, in this matter it appears that after amendment in written statement by defendant immediately by way of consequential amendment these facts have been brought by plaintiff and it is sufficient to show that why the plaintiff could not have raised the matter before the commencement of trial. Also Hon'ble Apex Court in various judgments held that , at the time of deciding application under Order 6 Rule 17 liberal view may be taken. So considering all these facts, I proceed to pass following order :

**ORDER**

1. Application is allowed.
2. Plaintiff to carry out amendment in the plaint within 14 days.

Umrer.  
Dt. 08/06/2016

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