

R.C.S. No. 49/2010
Kishna Mahadeo Gavali
+1 Vs. Narayan Mahadeo
Gavali and other.

ORDER BELOW EXH. 65

This is an application filed by plaintiff under Order 6 Rule 17 of Civil Procedure Code.

2. The plaintiff contended that he has filed this suit for declaration, partition and permanent injunction. The plaintiff and his father Mahadeo Gavali were together doing business of vending vegetables. The plaintiff no. 1 has major contribution in the earning derived from the said business and amount was kept with Mahadeo being father. The plaintiff no. 1 and his father from his business, they purchased filed bearing Bhumapan Nos. 586, 585 having area 1.21H.R. and 1.44 H.R. were purchased in the name of his father. Therefore, defendant No. 1 to 6 and plaintiff No. 2 had no equal share in the above suit field. So also the said property purchased after the marriage of daughters therefore, defendant No. 6 and plaintiff No. 2 have no share after the death of Mahadeo. The plaintiff No. 1 had communicated all these facts to his counsel who had drafted the plaint. But his counsel failed to enumerate necessary pleading in the plaint. However, the counsel for plaintiff no. 1 came to notice that concerned portion of the plaint was not drafted as per the say of plaintiff No.1. Hence, plaintiff filed this application and want to add para No. 3 A after para No.3 of the plaint as contemplated in application. He also contended that, he be declared that, he is having half share in the agricultural field of the said property. The purposed amendment will not change the nature of the suit. Hence, prayed to grant application.

3. On the other hand, defendant no.1 filed say at Exh. 67 and opposed the application, and contended that, the plaintiff was conversant of alleged facts. However, he has not taken any steps to amend the plaint for the continues period of last 8 years and kept himself silent in the case. Now case is fixed for evidence and the evidence is already commenced. The plaintiff already tried to amend the plaint on last two occasion with and intention to prolong the matter. Hence, prayed to reject the application.

4. Perused the application. Heard Ld. Advocates for both sides, following points arisen for my determination and I recorded my findings thereon with reasons stated below.

Sr.No	Point	Findings
1.	Whether at this juncture the purposed amendment is necessary for determining the real question in controversy between the parties?	In Negative
2.	What order?	As per final order

REASON

5. Ld. Advocate for plaintiff submitted that, the business of vending vegetables was carried out by plaintiff No.1 and his father Mahadeo exclusively. They purchased field property bearing B.No. 586 & 585 as mentioned in above para from so the income of said business. But that property were purchase in name of Mahadeo only, the plaintiff no.1 had equal share i.e. half share in the same, since besides his participation in

earning. The plaintiff no. 1 had obtained loan of Rs.20,000/- on 2.05.1993, Nagpur Zilha Parishad and contributed Rs.15,000/- from salary to cover deficit fund to purchase the filed property. Therefore, defendant Nos.1 to 3 are not entitled to get more than half share collectively. The defendant Nos.5 & 6 and plaintiff No.2 not entitled for any share in the suit field as same were purchased after their marriage. Therefore, he submitted that if permission is granted then no prejudice would be caused on the part of the defendant.

6. On the other hand, learned advocate for defendant submitted that present matter is pending for the evidence, so it means that trial has been commenced and the plaintiff was not filed his application despite of he well acquainted with the facts before commencement of the trial. Hence prayed to reject the application

7. After going through the application, say and record of the case, it appears that application is filed on 08.02.2018 and since that this application is pending. Despite of ample opportunities are given other defendants not filed their say hence no say order passed against them.

8. After perusal of record it appears that, plaintiffs have filed present suit for declaration, partition, possession and permanent injunction against the defendants. At the time of institution of this suit, plaintiff had claimed partition in *Bhumapan Nos. 586 & 585*. Plaintiff has contented that he was doing business along with his father and from the income of the business his father and plaintiff No. 1, they only purchase the said field property. Therefore, the plaintiff No. 1 entitled to get half share in the said

property and defendant Nos. 1 to 3 entitled to get half share collectively. The defendant Nos. 5, 6 and plaintiff No. 2 had not entitled for any share as these propertied are purchase after their marriage. So considering the fact it reveals that as the plaintiff No.1 at the time institution of suit and before commencement of the trial was well acquainted with the same fact that, he and his father had purchased the field bearing Bhumapan No. 586, 585 from the income of said vegetable business then question arise why he had not claim half share in the said property earlier. Now the present suit is pending for evidence and plaintiff has filed evidence affidavit on dt. 9.07.2015 and trial has been commenced. The plaintiffs has not given any genuine explanation about due diligence. As per proviso of Order 6 Rule 17, no application for amendment shall be allowed after the trial has commenced, unless 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. In such circumstance in the absence of any genuine explanation given by the plaintiff he is not entitled to incorporate purposed amendment in the plaint. Hence, considering the entire discussion made herein above I am not inclined to grant the application and pass the following order.

ORDER

1. Application Exh. 65 is rejected.
2. Cost in cause parties to take note

Date: 18/09/2024

(R.S.Mankar),
2nd joint Civil Judge (J.D.), Umred

