

ORDER BELOW EXH. 39

(Passed on 12th day of July, 2016)

The plaintiffs in the instant case, have filed this application under Order VI Rule 17 of the Code of Civil Procedure for amendment of plaint.

2. According to the plaintiffs, though it has been stated in the plaint that the plaintiff No.1 is recorded owner of the suit property alongwith other property. All the property is the ancestral property of the plaintiffs and it is in their possession. However, the facts regarding the origin and the acquisition of the suit property have not been mentioned at the time of drafting the plaint. It is contended that the plaintiff No. 1 being old and illiterate person could not narrate the facts in this regard due to her old age and weak memory. It is further submitted that in order to have the clear idea of the nature of the suit property and its origin, the proposed amendment in this regard is necessary. Hence, this application came to be moved.

3. Per contra, the Learned advocate for the defendants Mr. Gajbhiye opposed the application on the ground that the application is filed at the stage of evidence without bonafide reason and the proposed amendment is inconsistence with the pleading.

4. Having heard the Learned advocates for the both sides, I perused the record. In view of the rival pleadings and the documents placed on record, following points are formulated for my determination and I record my findings thereon with reasons as under :

Sr. No.	<u>POINTS</u>	<u>FINDINGS</u>
1	Whether the proposed amendment is necessary ?	Yes
2	What order ?	Application is allowed as per final order.

REASONS

As to point No.1 :

5. It is settled position of law that while adjudicating the rights of the parties, the origin of the suit property and its nature need to be taken into consideration. In fact, though the plaintiffs have stated the location and existence of the suit property, yet the pleading is silent on the point of its acquisition. The revenue documents show the existence of the property. But the plaintiffs are under obligation to prove the mode of its acquisition. In short, in order to avoid the further complications, the plaintiffs intend to bring all the relevant facts on record. Thus, prima facie it appears that the nature of the suit would not be changed.

6. In fact, the trial is yet to be commenced. In such scenario, no prejudice would be caused to the defendants. It is needless to say here that the application filed at belated stage can be allowed subject to appropriate costs, if it is required for fair and just trial. The averments in the proposed amendment application go to the root of the case. Therefore, in my opinion, the proposed amendment is necessary. Apart from this, the plaintiffs have stated that due to old age such facts were not narrated to the concern advocate at the time of drafting the plaint. Thus, the reason appears to be bonafide and the proposed amendment can be allowed even at the stage of evidence also.

7. Having regard to the settled position in respect of amendment, I have come to the conclusion that the present application for amendment deserves to be allowed. Hence, I record my finding in affirmative for point No.1 and proceed to pass the following order.

ORDER

- (i) The application filed at Exh.39 is hereby allowed subject to the cost of Rs. 500/- (Rs. Five hundred only).
- (ii) The plaintiffs shall carry out necessary amendment within stipulated period and shall file copy of amended plaint.

Ramtek
Date : 12.07.2016

(Sujitkumar C.Taide)
Civil Judge, Jr.Dn., Ramtek.