

MHNG140004882017

**Regular Civil Suit No.37/2017  
Manjulabai/Ganpat and others****ORDER BELOW EXH.61**(Passed on 26<sup>th</sup> day of February, 2020)

1. This is an application filed by the defendant no.1 for amendment in his written statement. According to him, during the pendency of this suit he found one partition deed executed between him and his brother Vasanta (deceased), by which the suit property came to his share. Hence, he wants to amend his written statement by incorporating the pleading as regard aforesaid partition deed. According to him, the proposed amendment is very much necessary to decide the real controversy between the parties. Apart from it, no prejudice would cause to plaintiff, if proposed amendment is allowed.
2. The plaintiff filed his reply to the instant application at Exh.62 and thereby strongly opposed the application on the ground that it is filed to fill the lacuna and to delay the proceedings. Eventually, he prayed to reject the application with compensatory costs of Rs.5000/-.
3. Heard both the sides. Perused record.
4. It is the contention of defendant no.1 that the alleged partition deed, which he seek to brought on record by way of this amendment application, is executed between him and his brother

Vasanta. Therefore, as per the contentions of defendant no.1 himself he was very well aware about the execution of alleged partition deed. In such circumstances, the defendant ought to have pleaded in that regard in his written statement. However, bare perusal of his written statement goes to show that there is no whisper about it in it. This suit is filed in November, 2017 and the instant application is moved in September, 2019. In between the period of this two years also, the defendant no.1 did not file any application on record to the effect that there exist any such alleged partition deed.

5. In this connection, I am guided by the ratio laid down in the case of *Chhabubai Haribhau Badakh .vs.. S.H.Khatod and Sons another* reported in *2009(6) Mh.L.J. 760* wherein it has been observed that *no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of trial.* The ratio discussed in the case cited supra does squarely apply to the facts of instant case. In the instant case also, the defendant no.1 failed to satisfy this Court that despite due diligence about the existence of alleged partition deed, he could not move the application for incorporating his written statement to that effect. On this count alone, the instant application deserves to be rejected.

In view of the discussion noted above, the instant application being devoid of merits deserves to be rejected. Hence, I proceed to pass the following order-

**ORDER**

1. Application Exh.61 is hereby rejected.
2. No order as to costs.

Parseoni.  
Date-26.02.2020.

(N.R.Bhalgat)  
Civil Judge, Jr. Dn., Parseoni,  
Tahsil-Parseoni, District-Nagpur.

Argument heard on	26.11.2019
Order passed on	26.02.2020
Transcription ready on	26.02.2020
Order checked and singed on	26.02.2020

**CERTIFICATE**

I affirm that the contents of this P.D.F. file of order are word to word, as per original order.

**Name of Stenographer**-Abhijit Yeshwant Kulkarni