

**Order Below Exh. 117 In R.C.S. 24/2013**

*(Passed on 28<sup>th</sup> September, 2017)*

1. Defendants have filed this application for amendment of their written statement under Order 6, Rule 17 of the Code of Civil Procedure. Perused the application which is supported with affidavit. Perused the say of plaintiff at Exh. 118.

2. Defendants vide this application intend to bring certain facts on record in respect of property bearing khasra No. 292 adm. 1.36 H.R and that about its measurement and the Panchanama drafted during the measurement wherein plaintiff has admitted that, he is not in possession of said field. In view of this fact defendants vide this application are trying to lead their firm defence against plaintiff in respect of said property challenging the plaintiff's claim therein. Considering the nature of this amendment and in view of defendants right to defend this case, this proposed amendment appears to be relevant to this suit in hand for its justifiable adjudication.

3. Admittedly, in view of plaintiff's say the matter is for evidence and plaintiff has led his evidence on affidavit on 31/10/2015 and defendant no.1 has cross-examined the witness and thereafter same is adjourned. So also, said application is barred by the proviso of Order 6, Rule 17 of CPC. Its the say of plaintiff that, defendant no.1 is aware of the case bearing RCS No. 27/09, about which defendants have pleaded in this application wherein plaintiff has not disclosed his source of title over property bearing khasra No. 292.

4. Admittedly, this application is hit by the proviso of Order 6, Rule 17 of CPC but, vide this proposed amendment the facts which defendants intend to bring on record are bearing some gravity which are possibly capable of going to the root of the suit and if these facts are not allowed to be brought on record it would cause injustice to defendants in view of their right of defence. Apart, the above proviso is the procedural bar with intend to curtail delays in civil proceedings but, defendants have admitted that, these facts

which they are intending to bring on record were not known to them until they sought the copies of the suit bearing RCS no. 27/09. The suit bearing RCS no. 27/09 has been decided and therefore, it might be possible that, after going through plaintiff's case and while leading their defence wherein defendants have pleaded about RCS no. 27/09, on count of disposal of this case it must have taken procedural delay to secure the copies of this proceeding. And as defendants were not parties to this suit it must have taken time for them to get its knowledge. Therefore, the delay though caused, do not appear to be intentional, resulting into barring of this application on count of above proviso.

5. Considering the nature of proposed amendment, as it appears to be relevant to this case in hand, defendants while leading their defence are entitled to get amended their written statement on the basis of this proposed amended facts. Admittedly, delay has been caused by the defendants. Considering above factual matrix, I pass following order :

**ORDER**

- 1) Application is allowed with costs.
- 2) Defendants to carry out the amendment till 29<sup>th</sup> September, 2017.
- 3) Defendants to deposit cost of Rs. 1500/- in Taluka Legal Aid till tomorrow. And then carry out amendment.
- 4) If order is not complied by tomorrow same shall be vacated.

**Date :** 28.09.2017.

Sd/-  
**(V. B. Kamble)**  
Jt. Civil Judge Junior Division,  
Kalmeshwar.