

ORDER BELOW EXH.83 IN R.C.S.NO.228/2012

This is an application by plaintiffs seeking amendment in the plaint. It is contended that plaintiffs have sought the relief of declaration and possession of the suit property. The pleading in the plaint is in accordance with the prayers made in the suit. However, language used therein is in the negative sense. Contents and reliefs sought by plaintiffs shall be in the positive manner. Therefore, it became necessary to seek an amendment in the plaint.

2] Plaintiffs, by the proposed amendment, intend to insert some contents in para 17 and 18 of the plaint, mentioning that suit properties are still jointly owned and that plaintiffs are exclusive owners of block No. 504. Secondly, they also intend to amend prayer clause, so as to mention therein that suit properties are jointly owned, so as to seek declaration thereof in addition to the declaration that partition has not been done. Moreover, they also want to seek declaration about ownership of plaintiffs over block No. 504 in addition to existing declaration sought by them that defendants did not get ownership rights. Same is the case in respect of suit well. The existing declaration is that defendants did not get ownership right therein. Plaintiffs want to add positive relief, seeking exclusive ownership thereof. Lastly, so far as relief of possession sought by plaintiffs is concerned, they want to add therein that possession is sought in the capacity of owner.

3] It is contended that the nature of proposed amendment is technical one. It will not change basic nature of the suit. Plaintiffs, by the proposed amendment, not going to put forth new case. It will not cause prejudice to the rights of other side. It necessitated only to convert the prayer clauses in the positive manner. The proposed amendment will make pleading lucid and it will be helpful to the Court, for drawing decree of the suit. Plaintiffs are praying for grant of application.

4] Called say of other side. Learned counsel for defendants filed his say and thereby resisting the application. It is contended that the proposed amendment is against the law and it is completely opposite to the prayers. It will change nature of the suit. If it is allowed, it will cause prejudice to the interest of defendants. Sufficient opportunities are given to plaintiffs to proceed with the suit. The suit has already been transferred from Pimpalgaon Court. Much time has been spent and the matter is pending for long period. The proposed amendment, if allowed, definitely change the structure of the suit.

5] Heard both sides. I have gone through pleadings of parties and documents on record. It can be seen that plaintiffs, by the proposed amendment, want to add some words in para 17 and 18 of the body of the plaint and in sub-clauses of para 24, which is prayer clause. It is argued on behalf of above plaintiffs that

plaintiffs are not going to replace the existing contents of the body of plaint or existing prayers made in the relief clause. What they want to add is the positive assertion, which may be useful to read and understand, as to what is specifically pleaded in the plaint and what kind of relief plaintiffs want from the Court. He invited my attention to all these wording in para 17, 18 and 24. It can be seen that whatever statements are made therein and whatever reliefs are sought are totally negative in nature. Plaintiffs are not claiming anything in their favour. They are only negating the alleged right of defendants. Thus, whatever statements are made therein would show that right of plaintiffs is presumed and any kind of interest of defendants is ruled out. Now, plaintiffs, by the proposed amendment want to make positive assertion and want to seek positive relief in their favour.

6] So far as objection by defendants is concerned, it is argued that the proposed amendment will change nature of the suit. On this point, it can be seen that presently, the suit of plaintiffs is for possession and declaration. Plaintiffs are claiming ownership over block No. 504 and suit well. They are seeking declaration thereof and consequential relief of possession is also sought. As seen earlier, they are assuming their right or interest therein and only negating right of defendants therein. Thus, whatever they are going to seek by way of an amendment, is relief of declaration and possession, in addition to whatever sought in the plaint. Thus, no

other kind of relief is additionally sought by plaintiffs. Therefore, certainly, it will not change nature of the suit.

7] Moreover, sum and substance of the plaint would show that throughout pleading, they have claimed their ownership right over the suit property block No. 504 and the suit well. Thus, when they seek declaration that other properties are not yet partitioned, then it is obvious that they want to say that those properties are still joint. In the same manner, when they seek relief that defendants did not have any right in block No. 504, they want to say that they are exclusive owners thereof. Same is the case in respect of suit well. So far as capacity of ownership which plaintiffs intend to insert in para 24(e) is concerned, then even considering entire pleadings in the plaint, it is obvious that whatever relief is sought by plaintiffs, is in the capacity of ownership and not in any other capacity. Therefore, making specific prayer by using specific words would certainly not change the nature of the suit. Of course, plaintiffs are going to seek additional prayer, so as to seek positive declaration. However, they did not intend to replace existing declaration in the negative form. Therefore, it can be said that additional ancillary or corollary relief is sought by plaintiffs, by the proposed amendment.

8] As seen earlier, no major or basic changes will be there after grant of an amendment. Nevertheless, defendants will have an

opportunity either to amend their written statement or to file additional written statement, regarding amended pleading. Therefore, it cannot be said that proposed amendment will cause prejudice to their rights. Even, they will have an opportunity to adduce evidence, in respect of their pleading, in case of necessity. It can be seen that defendants have raised grievance that the matter is pending since long. It has already been transferred from another Court to this Court. Much time has been taken by plaintiffs to proceed further and the application is moved at the last stage. At this juncture, allowing application will prolong the matter. Thus, point of delay is also raised by defendants. It can be seen that the matter was posted for final argument. At that time, issues were amended. Thereafter, the present application is moved. As per amended proviso of Order VI Rule 17 of the Code of Civil Procedure, plaintiffs are required to show that despite of due diligence, they could not seek the amendment much earlier stage, before commencement of trial. On that point, it is submitted by learned counsel for plaintiffs that amendment is necessary and by the proposed amendment, plaintiffs want to remove complications which may arise in the execution proceeding, in case of passing decree thereof. Therefore, it can be done even after commencement of the trial. The argument is acceptable.

9] Therefore, considering the above aspects, I am inclined to allow the application. Whatever delay is caused or will be caused

due to grant of an amendment or required to be compensated in terms of costs. Hence, I pass following order.

ORDER

1. The application is allowed subject to costs of Rs. 500/- payable to defendants.
2. Plaintiffs to carry out an amendment within 14 days and amended copy of the plaint be supplied.

Sd/-

Dindori.

Date :- 24/03/2017.

(D.J. Endait)

Civil Judge, J.D., Dindori.

CERTIFICATE

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

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| Name of the Stenographer | : | M.R. Kayastha. |
| Name of the Court | : | C.J.J.D, Dindori. |
| Date of order | : | 24/03/2017. |
| order signed by the Presiding Officer on | : | 24/03/2017. |
| order uploaded on | : | 24/03/2017. |