

ORDER BELOW EX. 17**(Passed On 30th September 2019)**

1. This is an application under Order 6 Rule 17 of C.P.C for amendment of plaint preferred by plaintiff.

2. Perused the application and read the reply. I have heard Smt. K.N Nimbalkar learned counsel for plaintiff and Mr. S.K Kulkarni learned counsel for defendants.

3. Smt. K.N Nimbalkar submitted that plaintiff has filed present suit for declaration, separate possession and partition against defendants. Smt. Nimbalkar submitted defendants were served with summons but till today they have not filed their written statement though they have appeared and have filed vakaltnama of their Advocate. Smt. Nimbalkar submitted that in plaint para 3 'Shantabai Suryabhan Aaher' and 'Kamlabai Dashrath Pagare' names are mentioned but its a typing mistake and needs to be corrected as 'Shakubai' in place of Shantabai and 'Kamalbai' in place of Kamlabai. Smt. Nimbalkar submitted that the proposed amendment as described in the instant application is just typographical mistake and needs to be incorporated in order to avoid any complication and to avoid any technical defect in the present suit. Smt. Nimbalkar submitted that is aforesaid material facts needs to be inserted in plaint by way of amendment being very material for proper adjudication of matter.

4. Smt. Nimbalkar submitted that proposed amendment as

described in the instant application is necessary being formal, very essential and material for the fair disposal of suit. Smt. Nimbalkar submitted that if the said proposed amendment as described in instant application is not allowed great prejudice and irreparable loss would be caused to plaintiff. Smt. Nimbalkar submitted in consonance to his application. Smt. Nimbalkar submitted that proposed amendment is just and proper and it does not change the nature of suit and plaintiff needs to be amended and accordingly, prayed to allow the instant application.

5. Mr. Kulkarni submitted that the nature of amendment is belated and it changes the nature of suit and great prejudice would be caused to defendants. Mr. Kulkarni submitted that the instant application is filed on 22/08/2019 and present suit was filed on 29/11/2018 this itself reveals the vigilance, diligence, conduct and bonafides of plaintiff. Mr. Kulkarni submitted that proposed amendment, if it is allowed would change the very nature of suit and great prejudice would be caused to defendants. Mr. Kulkarni submitted that plaintiff is trying to fill lacuna by amending his plaint and present application is not tenable. Mr. Kulkarni submitted that plaintiff is deliberately trying to delay the present matter for one or the other reasons. Mr. Kulkarni submitted that the facts stated in proposed amendment were well within the knowledge of plaintiff at the time of instituting the suit. Mr. Kulkarni submitted in consonance to his reply at Ex. 19 and vehemently opposed the instant application and prayed to the reject the instant application with costs.

6. In case of Baldev Singh and Others Vs. Manohar Singh and Another, 2006 (3) Bom C J 185 = 2006 (5) Mh.L.J 634 SC Hon'ble Supreme Court held that it is well settled that court should be extremely liberal in granting prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to other side.

7. In case of B.K.N. Pillai Vs. Pillai and Another, AIR 2000 SC 614 the Hon'ble Supreme Court held that application for amendment cannot be rejected merely on ground of prolonged delay in filing, especially when other party can be compensated by cost.

8. In case of Chakreshwari Construction Pvt. Ltd. Vs. Manohar Lal, 2017 (5) Mh.L.J SC wherein Hon'ble Supreme Court has held that parties are permitted to amend their pleadings at any stage not only during pendency of trial but also at first and second appellate stage with leave of Court provided that proposed amendment is bona fide, relevant and necessary for deciding rights of parties involved in lis. The Hon'ble Supreme Court relied on Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and others, 2009 MhLOnline (S.C.) 12 = (2009) 10 SCC 84 wherein Hon'ble Supreme Court has held in Para 63 as under-

Para 63:- *On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for*

amendment:

(1) whether the amendment sought is imperative for proper and effective adjudication of the case;

(2) whether the application for amendment is bona fide or mala fide;

(3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) whether the proposed amendment con-stitutionally or fundamentally changes the nature and character of the case? and

(6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive.

9. It is well settled by a Catina of decisions of Hon'ble High courts and Hon'ble Supreme Court that allowing and rejecting an application for amendment of plaint is really the discretion of

the court and the amendment of the plaint also should not be refused on technical grounds.

10. On going through the application for amendment in the light of averment in plaint, written statement and arguments canvassed before me it is seen that the amendment sought is bona fide. It is pertinent to mention that present matter is of the year 2018 and present application is preferred after lapse of around 9 months. This itself reveals the conduct, bonafides, vigilance and diligence of plaintiff in the present matter. It is pertinent to mention that yet written statement is not filed by defendants and issues are also not framed by Court. This court is satisfied that proposed amendment is necessary for the purpose of determining the real questions in controversy between the parties, avoiding multiplicity of suits, for the fair adjudication of trial and no prejudice would be caused to defendants, if they are compensated by way of costs. In the result, applying the ratio of cases cited supra, I am inclined to pass the following order.

ORDER

1. The application at Ex. 17 is allowed.
2. The plaintiff is allowed to amend his plaint within two weeks subject to payment of cost of Rs. 200/- (Two Hundred Only) in the Court for defendants & Rs. 200/- (Two Hundred Only) in TLISA.

3. The defendants are allowed to withdraw amount of their cost after deposition in Court by plaintiff.
4. The plaintiff is directed to file fresh amended copy of plaint on record.

Place:- Chandwad

Date:- 30/09/2019

(N. A Ingley)
Civil Judge Junior Division
Chandwad