

**R.C.S. No.31/2016**

**Popat Bhikan Aher,**

**Vs.**

**Balasaheb Rajaram Wagh & Ors.**

**Order Below Exh. 59**

The present application is filed by the defendant No. 1-a to 1-c, defendant No.2, defendant No. 3 and defendant No. 12 seeking amendment of the counter-claim under order VI Rule 17 of the Code of Civil Procedure.

2. The defendants contend that they have filed counter-claim to the suit filed by the plaintiff. However, they want to seek amendment in para No. 32(3) of the said counter-claim regarding limitation in filing the suit and regarding illegal possession of the plaintiff over the suit land. Thus, the defendants contend that if the present application is allowed it will not change the nature of the suit. If the present application is allowed, no prejudice will be caused to the plaintiff. However, if the present application is rejected the defendants will suffer irreparable loss. Hence, the defendants prayed that the present application be allowed.

3. The plaintiff resisted the present application by filing his say below the application. He contended that the present application is not legal and proper. Amendment cannot be sought in the counter-claim. The amendment is change the nature of written statement. Hence, the present application be rejected.

4. Ld. Advocate for the defendants Shri. P.S.Pagar and Ld. Advocate for the plaintiff Shri. N.P. Chandratre argued as per the application and say respectively.

5. Perused the application, say and documents filed on record. Heard ld. Adv. For the plaintiff and Ld. Advocate for the defendants.. At this juncture it is necessary to discuss the provisions of order VI Rule 17 of Code of Civil Procedure.

Order VI Rule 17 of C.P.C. reads as follows.

*Amendment of pleadings-The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.*

*Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”*

6. As per the above provision, pleadings may be amended by either party at any stage of the proceedings if it is necessary for the purpose of determining real question in controversy between the parties. The amendment which the defendants have sought is in respect of law of limitation. The said point is necessary to be decided to determine the real question in controversy between the parties. The defendants have also sought to incorporate pleading regarding illegal possession of the plaintiff over the suit land. On perusal of counter-claim filed by the defendants at exh. 24 it appears that the defendants have already made prayer regarding seeking possession of the suit land. Hence, the said pleadings which the defendants seek to incorporate by way of the present amendment will not change the nature of the counter-claim. Hence, there is not harm if the amendment sought by the defendants is allowed. If the present application is rejected, the defendants will be denied the opportunity of putting up their case before the court. On the other hand, if the present application is allowed no prejudice will be caused to the plaintiff as the plaintiff will have opportunity to file say to the amended counter-claim.

In the light of the above discussion, I pass the following order-

**ORDER**

1. Application (Exh. 59) is allowed with costs Rs. 100/- (in words Rupees Hundred only)
2. The defendants to pay costs to the plaintiff.
3. The defendants are directed to carry out the amendment and file the amended counter-claim on or before the next date.

( Dictated and pronounced in open court )

Place : Kalwan  
Date : 10.08.2021

Sd/-  
( A. C. Joshi )  
Jt. Civil Judge, J.D., Kalwan