

Reg. Civil Suit No.95/2013**Order below Exh.62**

1. This is an application filed by plaintiffs vide Order-6 Rule-17 of Code of Civil Procedure, seeking an amendment in plaint to add proposed defendant no.9 to 11 and to describe additional proposed properties inserting in para-1 of the plaint as mentioned in para-3 of the application. Further to amend plaint inserting para-5 to raise consequential pleading.

2. Perused application and say of defendnats. Gone through the pleading and documents of both parties.

3. Ld. Adv. Shri. Ranaware for plaintiffs submitted that the present suit is for declaration, partition and injunction. It is a case of plaintiff that suit property which is particularly mentioned in para-1 of plaint is ancestral property of plaintiffs and defendants. This suit property yet not partitioned among plaintiffs and defendants. Plaintiffs want their share in suit property. However, defendants refused to give share in the suit property hence, plaintiff has filed present suit for partition. He further submitted that Survey No.17/1 and 17/6 situated at Erandgaon, Tal. Yeola are also ancestral properties of plaintiffs and defendants. However, plaintiff not added Survey No.17/1 and 17/6 in plaint hence, by virtue of this application, plaintiff seeking insertion of Survey No.17/1 and 17/6 and also Gat no.62 and 67 in plaint. Further he want to add proposed defendant no.9 to 11. The proposed amendment is necessary to decide the real question in controversy between the parties hence, prayed for allow the application.

3. Heard, Id. Adv. Shri. Vasaikar for defendant no.1 to

8. Defendant no.1 to 8 had contested suit vide written-statement (Exh.23). Defendant have denied the fact that suit property is ancestral. It is the case of defendants that suit-property received in the name of defendant no.1 by Gift-Deed. Ld. Adv. Shri. Vasaikar has strongly opposed the amendment by claiming that no new facts occurred during pendency of suit. After such huge delay, to fill-up lacuna, plaintiff preferred this application for amendment. If such application is allowed, it will cause prejudice to on the defendants. No explanation given by plaintiff for delay. He further submitted that Predecessor of this Court framed issues at Exh.29 on 10/07/2015. The matter was posted for evidence of plaintiff. Plaintiff trying to add Gat No.62 and 67 alongwith Survey Nos. 17/1 and 17/6. Plaintiffs have specifically relinquished their right over Gat No.62 and 67 by plaint itself. The proposed amendment in respect of Gat No.62 and 67 are conflict with averments made in plaint. Hence, the proposed amendment in respect of Gat No.62 and 67 will change the nature of suit. Moreover, Survey Nos. 17/1 and 17/6 are received in the name of defendants by Gift-deed hence, proposed amendment is not necessary for determination of real controversy between the parties. Hence, prayed for rejection of application.

4. I have heard Id. Adv. Mr. Ranaware for the plaintiff and Id. Adv. Mr. Vasaikar for defendants. Having heard both sides at length, following points emerges for consideration. I have recorded my finding upon it with reasons.

Sr. No.	Points	Findings
1	Whether proposed amendment is necessary for the purpose of determining real questions in	Partly Yes

	controversy between the parties ?	
2	What order ?	As per final order

- REASONS -

AS TO POINT NO.1 :-

5. In order to decide an application of amendment, it is a prime concern for the parties and the Court to see whether proposed amendment is essential for the just decision of the case and to decide the real questions in controversy between the parties.

6. It is a case of plaintiff that Gat No.229, 62, 67 and Survey Nos. 17/1 and 17/6 are ancestral properties of plaintiffs and defendants. Plaintiff no.1 is a daughter-in-law of defendant no.1. Defendant No.1 is grand-father of plaintiff no.2 and 3. Eknath Mutekar was son of defendant no.1. Eknath died on 13/11/2002 beside wife (plaintiff no.1) and two daughters (plaintiff no.2 and 3). Being legal heirs of deceased Eknath, plaintiff claimed share in suit-property. However, due to the mistake, they have not included Survey Nos. 17/1 and 17/6 situated at Erandgaon in the plaint. On other hand, it is a case of defendants that said survey nos. are received in the name of defendant no.1 by Gift-deed. Defendants are absolute owner of the Survey Nos. 17/1 and 17/6. after going through the application and nature of suit, whether suit-property and Survey no.17/1 and 17/6 are ancestral or received to defendant no.1 by Gift-deed will be cleared after evidence of both parties during trial. At this stage, plaintiff claiming that survey no.17/1 and 17/6 are ancestral properties of plaintiffs and defendants. Plaintiff is master of his suit. Hence, in partition suit, it

is expected to include all the properties and necessary parties for effective and final adjudication. Hence, it can be gathered from the above discussion that it would be proper to permit plaintiff to include Survey Nos. 17/1 and 17/6 in plaint for final adjudication. It will not prejudice to defendant as, they have opportunity to putforth their case.

7. Now, coming back to another aspect that plaintiff also seeking proposed amendment to add Gat No. 62 and 67 situated at Erandgaon by para-3-c and 3-d of application. Ld. Adv. for defendant strongly opposed amendment as per para-3-c and 3-d of application. Ld. Adv. Vasaikar submitted that it is the specific case of plaintiff that he has no complaint in respect of Gat No.62 and 67 which was sold before the institution of this suit. Plaintiff has deliberately relinquished his claim in respect of Gat no.62 and 67 hence, proposed amendment in respect of Gat no.62 and 67 is contradictory and conflict with case of plaintiff hence, it will change the nature of suit-claim. I have gone through the pleading of plaintiff i.e. plaint. It is a specific case of plaintiff that they have no complaint in respect of Gat No.62 and 67. It appears that they deliberately relinquished part claim hence, I found substance in the argument advanced by Id. Adv. for defendant. Once, relinquishment of part claim cannot be permit to add in plaint, hence, proposed amendment i.e. para-3-c and 3-b of application cannot be permitted.

8. Further vide para-4 of application, plaintiff want to add proposed defendants. Proposed defendant no.9 having concern with Survey No.17/1 and 17/6 hence, proposed amendment is necessary to that extent only. However, from the above discussion, it can be gathered that proposed amendment in resepect of Gat No.62 and 67 it cannot be permitted hence, as

proposed defendant no.10 and 11 are concern with Gat no.62 and 67. Hence, proposed amendment in respect of defendant no.10 and 11 are not necessary. In short, proposed amendment vide para-3-c and 3-d of the application cannot be permitted.

9. Plaintiff filed present application after settlement of issues. In these circumstances, it is a necessary to impose heavy cost upon the plaintiff to allow the amendment. So that defendant can be compensated for the delay and in convenience in facing a trial for more than five years approximately. Thus, the important consideration which governs the discession of the Court is that potentially of injustice to the otherside, if the inconvenience or prejudice to other side would be compensated by way of an order of cost. That would constitute a relevant consideration in allowing the application. In determining what cost should be awarded, the Court would inter-alia have regard to the amendment which is sought, the financial benefit, if any denied by one party and the cost of other, the delay and in convenience caused by protraction of hearing and in the event of appeal to the higher Courts that the victim of the amendment is compeled to bear addtional cost. These considerations have been ellucidated in the judgment of the Hon'ble Supreme Court in Case of Ravajeetu Builders and Developers Vs. Narayan Swami and Sons reported in (2009-10) (SCC) 84 .

10. Resultantly, the proposed amendment as per para-3-a, 3-b and 5 of application have tobe allow to decide the real question in contraversy between the parteis subject to cost Rs.3000/- to be paid by plaintiffs to defendants before amendment. However, proposed amendment para-4 of the application is partly allowed only extent to add defendatn no.9 i.e. Suresh Karbhari Newale. It is a needless to state that proposed amendment in

respect of other proposed defendant i.e. defendant no.10 and 11 are not permitted. Proposed amendment by para-6 of the application allowed only extent to Survey No.17/1 and 17/6. Hence, Accordingly, I answer to the point under consideration and I pass following order.

- ORDER -

1. Application is partly allowed subject to cost of Rs.3000/- (Rs.Three Thousand) to be paid to the defendants and shall amend in the plaint as follow -
 - a) The plaintiff is hereby directed to amend in the plaint as per para-3-a, 3-b and 5 of the application,
 - b) The plaintiff is hereby directed amend as per para-4 of the application only to the extent to add defendant no.9 i.e. Suresh Karbhari Newale.
 - c) The plaintiff is hereby directed amend as per para-6 of the application only the extent of Survey No.17/1 and 17/6.
2. Plaintiff to carry-out amendment upto next date of hearing failing to which the order stands vacated unless, time is extended by the Court and shall file the amended plaint forthwith.

(N.N. Chintamani)

04/12/2018

Civil Judge, J.D., Yeola (Nashik).