

Order below Exh. 44

1. Suit is for partition. Defendant no.1 has filed this amendment application for insertion of recitals in respect of agreement dtd. 04/11/1987 whereby he allegedly gained ownership and possession over land Gat no.811 and 814.

2. Plaintiff's say is vide Exh.53. It is claimed that application is not supported with proper documents and evidence. It is claimed that proposed amendment is not within limitation.

3. Heard rival counsels. Perused record.

4. Considering rival contentions of parties following points arise for my determination:-

<u>Points</u>	<u>Findings</u>
1. Whether the proposed amendment is necessary to determine real question in controversy between the parties? Yes
2. What order? As per Final Order

REASONS

As to point no.1 :-

5. The proposed amendment is in respect of agreement dtd. 04/11/1987. The proposed fact that land gat

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no. 811 and 814 do not constitute ancestral property but is independent property of defendant no.1 is relevant to the pleading of the case.

6. At the same time, defendant no.1 cannot be allowed to incorporate counter claim in the amendment application. A separate procedure is required to be followed for adducing counter after filing of written-statement. The said procedure is laid down in Order 8 Rule 9 of CPC.

7. Even so, as per Article 58 of Limitation Act, suit to obtain declaration is to be filed within three years from when right to sue first accrues. In the present suit, it can be understood that rights of defendant no.1 have been denied or challenged by plaintiff by filing the suit on 23/11/2011. This appears to be starting point of limitation for defendant no.1 to sue for declaration. Present application is dtd. 05/07/2012. On the face of it, proposed amendment is not barred by the limitation. I am fortified by ratio laid down in N.C. Banerjee Vs. Manoj Balkrishna Shah and others... [2011 (3) BCJ 34] The Hon'ble Bombay High Court has held that “contention that subject mater of amendment is barred by limitation need not be gone into, unless it can be ex facie seen that it is barred by limitation.”

8. Proposed amendment is necessary to bring all relevant facts on record. Accordingly, point no. 1 is answered in the affirmative.

As to point no.2 :-

9. In view of above findings, following order is passed.

ORDER

- A. Application is partly allowed subject to cost of Rs.150/- (Rs. One Hundred Fifty only).
- B. Defendant no.1 shall carry out amendment in para-9. Only following sentences be added “तसेच प्रतिवादी क.१ चे वडील ते त्यामुळे सदरच्या जमीनी या वडीलार्जित मालकीच्या नाहीत.”
- C. Defendant shall carry out proposed amendment within fourteen days of this order.

**Yeola, Dist.Nashik,
Date : 21/09/2015**

**(Sau. A.R. Rahane)
Civil Judge, J.D., Yeola.**