

ORDER BELOW EXH. 27 IN
REG. CIVIL SUIT NO. 34/2021

This is an application filed by plaintiffs for amendment under Order VI Rule 17 of the C.P.C. It is submitted that plaintiff No. 5 Rajendra Nivrutti Doiphode died on 03.02.2021 during pendency of suit, therefore plaintiffs could not pay attention towards suit. After that plaintiff and his heirs found that certain properties are remained to be added in the suit and description are remained to be mentioned. Plaintiffs want to add in para No. 1 clause No. 'I & EE' in respect of Gat No. 182/1/3 and City Survey No. 196, 197 and House No. 786. Further, plaintiffs want to add para No. 2B regarding family tree of Trambak Doiphode and Laxmibai Doiphode. Further, plaintiff wants to add para Nos. 5 to 9 in respect of ownership of suit property, partition which took place on 06.12.1993, compromise which took place in Spl. Civil Suit No. 144/1989, compromise took place in Spl. Darkhast No. 19/2005, relinquishment deed dated 03.09.2016, sale of shares by defendant Nos. 1 and 2, contention that suit properties are owned and possessed by Nivrutti, Baban and Waman and they are jointly cultivating the suit properties, heirs of Nivrutti Trambak Doiphode who died on 20.07.2018, that surname Dokphode and Doiphode are one and the same, addition of daughter of Ramnath as defendant No. 2, execution of sale-deed No. 3591/2020 by defendant No.1. Further, plaintiffs want to add that it may be declared that the said sale-deed is illegal, null and void and not binding upon share of plaintiffs. Further, plaintiffs want to add that 6D Entry No. 49103 recorded on the basis of sale-deed executed by defendant No. 1 in favour of defendant No.3 is illegal and may be cancelled. Further, plaintiffs want to add in para No. 13 in prayer clause that it may be declared that plaintiff Nos. 1 to 10 are owners of suit properties, sale-deed No. 3591/2020, 6D Entry No. 49103 are not binding upon suit property and shares of plaintiffs, defendant Nos. 1 and 2 have no right and share in the suit properties in view of partition and relinquishment deed No. 2797, permanent injunction

may be granted against defendant Nos. 1 to 3. Further, plaintiffs want to add that defendant Nos. 1, 2 and deceased Ramnath executed general power of attorney in favour of Nivrutti Trambak Doiphode and defendant Nos. 1 and 2 executed relinquishment deed in favour of Baban Trambak Doiphode. Further, plaintiffs want to delete contention made in para No. 2 that Waman, Ramnath, Baban and Nivrutti obtained share in suit properties as per the decree in R.C.S. No. 144/1989, Ramnath and Nivrutti are dead and names of their heirs have been recorded to their share, Waman Doiphode and Baban Doiphode are plaintiff Nos. 1 & 2 and plaintiff Nos. 3 to 8 are heirs of Nivrutti Doiphode, defendant Nos. 1 and 2 are heirs of Ramnath Doiphode. Further, plaintiffs want to delete contentions made in para No. 3 that defendant No. 1 sold suit properties to defendant No. 3 and sale-deed No. 3591/2020 has been registered at Registrar Office, Sinnar. Further, plaintiff wants to replace the word 'hakka' instead of 'watap zale'. Further, plaintiffs want to add in para No. 4 the word '०६.१२.१९९३ च्या वाटपाने व' before the word 'सन २०१६'. In amended para No. 10 cause of action mentioned in para No. 5 in the suit may be mentioned and contention that cause of action arose as illegal sale-deed has been executed and defendant Nos. 1 and 2 are obstructing the possession of the plaintiffs. Further, plaintiffs want to add in amended para No. 11 the pleadings mentioned in para No. 7 of the suit and pleadings in para No. 8 may be deleted and amended para No. 11 may be added there in respect of Court fee stamp as per amendment.

2] Defendant No. 2 filed say below Exh. 42. It is submitted that she has no objection to the proposed amendment sought to be made by plaintiffs.

3] Defendant No. 3 filed say below Exh. 45 and opposed the application. It is contended that nature of suit is changing due to the proposed amendment. In the present suit, plaintiff claimed permanent injunction. But, plaintiff claimed different declarations in the proposed amendment. The proposed amendment is not in proper form. Para No. 11

is shown in amendment, but there are only para Nos. 1 to 9 in the suit. Plaintiffs are claiming additional pleadings and reliefs and not the amendment. Plaintiffs are seeking to delete some reliefs and pleadings. There is no provision in the C.P.C. to delete the pleadings. The application below Exh. 27 is ambiguous and plaintiffs have not given satisfactory reason for amendment. Relief and subject matter of the suit are changing due to the said amendment. Therefore, application below Exh. 27 be rejected.

4] Heard both the sides and perused record.

5] Considered submissions alongwith record. It can be seen that plaintiffs have filed present suit for declaration that plaintiffs are owners of suit property and for permanent injunction to restrain defendants from creating obstruction in the ownership and possession of plaintiffs over suit property and not to alienate the suit property and not to create charge over suit property. In the present application plaintiff submitted that plaintiff No. 5 Rajendra Doiphode died on 03.02.2021 and he used to see the proceedings in the present suit. It is further submitted that these plaintiffs could not pay attention to this suit due to demise of plaintiff No.5 and thereafter they came to know about some properties and descriptions which are remained to be added in the suit, therefore they want to make proposed amendment. It is to be noted that heirs of plaintiff No. 5 were brought on record as per order below Exhs. 21 and 23 on 05.04.2022. In the proposed amendment, plaintiffs are seeking to add the above mentioned properties, pleadings in regard to family tree, previous partition dated 06.12.1993, relinquishment deed, compromise, decree, sale-deed executed by defendant No. 1 in respect of suit property bearing No. 3591/2020 and about ownership, possession and rights of plaintiffs over suit property. Further, plaintiffs are seeking to claim declaration that they are owners of suit property, that sale-deed No. 3591/2020 is not binding on their share and that defendant Nos. 1 and 2 have no right and share in the suit property in view of partition and relinquishment deed and permanent injunction against defendant Nos. 1 to 3. From this, it can

be said that plaintiffs are claiming additional relief of declaration in respect of sale-deed and rights and shares of defendant Nos.1 and 2 as alleged above and want to add pleadings in that respect. Further, plaintiffs also sought to delete some portion from para No. 2, from para No. 3 and add some words in para No. 4 and want to add para Nos. 10 & 11 as mentioned above.

6] Defendant No. 3 opposed the application on the ground that the proposed amendment is changing the nature of suit and there is no provision to delete pleadings in the suit. It is the contention of plaintiff that they came to know about the said properties and descriptions after demise of plaintiff No. 5. It is clear that plaintiff No. 5 died on 03.02.2021 during pendency of suit. It is to be considered here that if the amendment is necessary for the purpose of determining the real questions in controversy between the parties, then Court may allow the parties to alter or amend pleadings in such manner and on such terms as may be just. In the present suit, plaintiffs have already sought declaration and permanent injunction and plaintiffs are seeking same reliefs of declaration and permanent injunction by adding the above mentioned properties and pleadings in that respect as alleged above. Further, plaintiff also wants to delete above mentioned pleadings and add words in the suit. Therefore, it can be said that the proposed amendment would not change the nature of suit. Further, trial has not commenced in the present suit. The proposed amendment would not cause any prejudice to defendants as they will have opportunity to present their case consequently. Moreover, in view of above, it appears that the proposed amendment is necessary to determine the real questions in controversy between parties and to avoid multiplicity of litigations between parties. However, it can be said that plaintiffs were not diligent at the time of filing of suit in respect of properties and pleadings mentioned in the proposed amendment. This caused inconvenience and hardship to defendants, but this can be mitigated by imposing cost upon plaintiffs. Hence, the application deserves to be allowed for cause of justice. In turn, I pass following order :-

ORDER

- [1] Application is allowed subject to cost of Rs. 2,000/- (Rs. Two Thousand Only) payable to defenddants.
- [2] The plaintiffs shall carry-out the proposed amendment within 14 days from the date of this order at their own cost.

Place : Sinnar
Date : 14.02.2023.

Sd/-xxx
(Smt. K.B. Gite),
Civil Judge, Jr. Dvn., Sinnar.