



ORDER BELOW EXH.47 IN R.C.S. NO.103/2018

(CNR No.MHOS-10000196-2018)

This application is filed by plaintiff under Order-VI, Rule-17 of the Code of Civil Procedure, 1908 (in short, 'C.P.C.'), for amendment in the plaint.

2] According to plaintiff, defendant No.1 in his written-statement has mentioned that all the legal heirs of Shevantabai are not mentioned in the plaint, but he has not given details regarding the same. During cross-examination of plaintiff, defendant No.1 asked one question 'whether Vishnu Narayan Ovhal is your brother' to which plaintiff replied that Vishnu is his step-brother. Vishnu is not born to Shevantabai from Narayan. Shevantabai has only three sons from Narayan who are plaintiff and defendants No.2 & 3. Shevantabai had performed second marriage with Narayan. Vishnu is son of Shevantabai born from her first husband. Therefore, plaintiff is willing to amend the plaint by adding paragraph No.1A in the plaint stating the aforesaid facts. The amendment is formal in nature and it will not change the nature of suit. At the time of filing the suit, said paragraph No.1A was not mentioned in the plaint, as Vishnu has no right in the suit property. However, due to question asked in the cross-examination to plaintiff, the amendment is necessary. If plaintiff is not permitted to amend the plaint, he will suffer irreparable loss. Therefore, plaintiff prayed for allowing the application.

3] Defendant No.1 resisted the application by filing say at Exh.49. According to defendant No.1, the application filed by plaintiff is false, misconceived and not tenable. The trial has begun and after disclosing truth by plaintiff and by witness, the plaintiff is trying to amend the plaint to cover his damage. The amendment sought is inconsistent with the original pleadings. In written-statement, defendant No.1 putforth factual situation regarding legal heirs of late Shevantabai and considering the same, the Court has specifically framed the issue regarding non-joinder of necessary party. Defendant No.1 has mentioned the name of legal heirs of late Shevantabai in paragraphs No.13 and 16 of the written-statement. The plaintiff has knowledge regarding the name of his brother, namely Vishnu. He has intentionally suppressed the material information from the Court and not made his brother as party to the proceeding. The plaintiff has filed evidence affidavit wherein he has made statement on oath stating that he and defendants No.2 and 3 are only legal heirs of late Shevantabai and as such plaintiff has made perjury. To patch up the damage caused due to admission in cross-examination, such amendment is sought by the plaintiff. If such frivolous amendment is allowed, then defendant No.1 will sustain irreparable loss, as after disclosing defence the plaintiff is seeking amendment, which cannot be allowed at belated stage. Hence, defendant No.1 prayed for rejection of the application.

4] Heard Ld. Advocate Shri. R.V. Mote for the plaintiff and Ld. Advocate Shri. P.J. Deshmukh for defendant No.1. Perused application and say.

5] Points for determination along with findings are as follows :

<u>Points</u>	<u>Findings</u>
1. Whether the plaintiff satisfies that the proposed amendment is necessary for determining the real question in controversy between the parties ?	..No.
2. What order ?	Application is rejected.

REASONS

As to Points No.1 :

6] The plaintiff has sought amendment in the pleadings, i.e. plaint by addition of paragraph No.1A. Order-VI, Rule-17 of C.P.C. enumerates the circumstances under which the Court may allow either parties to amend their pleadings. Here, it would be relevant to reproduce Order-VI, Rule-17 of C.P.C. :

Order VI Rule 17: 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.

7] The aforesaid provision of law clearly contemplates that, before commencement of trial a party may be permitted to amend his

pleadings if he satisfies the Court that the said amendment is necessary to decide the real question in controversy between the parties. However, it also contemplates that once the trial is commenced, the party has to first show that in spite of due diligence he could not amend his pleadings earlier. Hence, the second test comes in play only after the Court is satisfied about the due diligence.

8] In the present case, the issues between the parties are settled *vide* Exh.39 on 04.03.2020. Thereafter, the plaintiff has adduced his evidence at Exh.40 and evidence of his witness Kisanabai Ovhal at Exh.44. Presently, the matter is pending for further evidence of plaintiff. Hence, the present application has been filed after the commencement of trial.

9] In order to showcase due diligence, the plaintiff has submitted that, plaintiff and defendants No.2 and 3 are the only legal heirs of Shevantabai born from Narayan. Since Vishnu is not born to Shevantabai from Narayan, they had not mentioned the name of Vishnu as legal heir of Shevantabai in the plaint. According to plaintiff, since the suit property is joint family property of their father Narayan, and since Vishnu is not a son of Narayan, Vishnu has no right in the suit property and hence his name was not mentioned in the plaint. As such, question of due diligence at the instance of plaintiff would not arise.

10] It is important to note that, it is not disputed that Shevantabai is real mother of Vishnu. When it is so, Vishnu can also be said to be an heir of Shevantabai. The plaintiff is seeking amendment in

the plaint on the basis of admission given by him during his cross-examination that Vishnu is his brother, but he is his step-brother (सावत्र भाऊ). Though plaintiff has stated that Vishnu is his step-brother, since their mother is one and same, i.e. Shevantabai, Vishnu is obviously uterine brother of plaintiff. It is material to note that, plaintiff has also stated in his cross-examination that Vishnu resides with him at Sangli. This fact itself shows that, plaintiff was well aware about the status of Vishnu.

11] It is also material to note that, defendant No.1 in her written-statement (Exh.23) in paragraph No.13 has specifically stated that, plaintiff has not added legal heir of late Shevantabai in the suit. Further, in paragraph No.16 of the written-statement, defendant No.1 has specifically denied that the plaintiff and defendants No.2 and 3 are only legal heirs deceased Shevantabai. Defendant No.1 has filed her written-statement (Exh.23) on record on 27.03.2019. Though defendant No.1 has not mentioned in the written-statement as to which legal heir of Shevantabai is not mentioned in the plaint, still plaintiff had opportunity to move the application for amendment soon after the defendant No.1 filed her written-statement (Exh.23), especially when defendant No.1 has specifically denied in the written-statement that plaintiff and defendants No.2 and 3 are only legal heirs deceased Shevantabai.

12] It is further important to note that, cross-examination of plaintiff was conducted on 23.08.2021. Thereafter, affidavit of examination-in-chief of plaintiff's witness namely Kisanabai Ovhal was filed on 21.12.2021 and her cross-examination was conducted on

10.03.2022. Thereafter, instant application was filed by the plaintiff on 13.04.2022. It shows that, plaintiff was also not diligent enough in moving the instant application after conclusion of his cross-examination on 23.08.2021. This period of almost eight months taken by plaintiff after conclusion of his cross-examination to move the instant application cannot be overlooked. Hence, it could be seen that the plaintiff failed to exercise his due diligence in spite of ample of opportunities.

13] While seeking amendment, plaintiff has given explanation that Vishnu is not a son of Narayan and therefore he has no interest in the suit property and hence he was not made party to the suit. If plaintiff is contending so, what is necessity for him to seek amendment as prayed by him ? When explanation regarding status of Vishnu has already been come on record during cross-examination of plaintiff and when it is the stand of plaintiff himself that Vishnu has no right in the suit property he not being a son of Narayan, the amendment sought by plaintiff does not appear necessary to determine the real question in controversy between the parties. In view of the aforesaid discussion, application is liable to be dismissed. Accordingly, I answer Point No.1 in the negative and in answer to Point No.2, pass following order :

ORDER

Application (Exh.47) is rejected.

Date : 15.02.2023

Place : Washi

(H.M. Momin)

Jt. Civil Judge, Junior Division,
Washi