

COMMON ORDER BELOW EXHIBIT 98 & 100

Application at Exh.98 is filed by defendant Nos.1, 2, 4 to 6 and application at Exh.100 is filed by defendant No.3 seeking amendment as per Order VI Rule 17 of the Code of Civil Procedure.

02. It is the case of defendants that, plaintiff has filed suit for partition and separate possession in respect of land in block No.364 adm. 80R, block No.376 adm. 1H-48R situated at village Ulup, Tal. Bhoom, Dist. Osmanabad, land in block No.56 adm. 30R, in block No.64 adm. 27R, in block No.198 adm. 2R, in block No.427 adm. 73R situated at village Rameshwar, Tal. Bhoom, Dist. Osmanabad, and Gram Panchayat House No.236 and 235. Suit properties are self acquired property of defendant No.1. Defendant No.1, 2 & 5 have appeared and filed their written statement vide Exh.36. Defendant No.4 & 6 have adopted the written statement filed by defendant No.1, 2 & 5. The same case is of defendant No.3.

03. Defendant Nos.1 to 6 sought following amendments in their written statement.

हे की, कैफियतीच्या खरी वस्तुस्थिती मधील पेज नंबर ३ वर पॅरा नंबर ३ मध्ये ३/अ वाढविण्यांस परवानगी देण्यांत यावी.

३/अ) हे की, जमीन जुना स.नं.७ यास एकत्रीकरण योजनेमध्ये एकत्रीकरण योजना राबवित असताना ज्याचा पोट हिस्सा नं.१६ व २५ असा असून त्या जमीनीला गट नं.५६ व ६४ देण्यांत आले. सदर जमीनी या प्रतिवादी नं.१ च्या स्वतंत्र खरेदीच्या मिळकती आहेत. तसेच जमीन जुना स.नं.६ ज्याचा पोट हिस्सा नं.४ क्षेत्र ० हे. ०२ आर ही जमीन सामाईक

विहिरीची आहे. त्यास गट नं.१९८ देण्यात आला. सदर गटा मधील खातेदाराना वादीने पार्टी केलेले नाही, म्हणून वादीचा दावा चालू शकत नाही. वादीने गट नं.१९८ मधील सर्व खातेदाराना पार्टी करणे आवश्यक आहे.

वरील प्रमाणे सदर कैफियती मध्ये पॅरा नं.३ च्या पुढे ३/अ वाढविण्यास परवानगी देण्यात यावी. सदर दुरुस्तीमुळे मुळ कैफियतीच्या स्वरूपात कसलाही बदल होत नाही.

तसेच कैफियतीच्या खरी वस्तुस्थिती मध्ये पेज नं.३ वर पॅरा नं.३ च्या सदरात पॅरा नं.२ मधील शेवटची लाईन प्रतिवादी नं.१ची ७/१२ पत्रकात नोंद झाली च्या पुढे जमीन जुना स.नं.७२ क्षेत्र ० हे. ७३ आर ज्याचा पोट हिस्सा ७ या जमीनीला एकत्रीकरण योजने मध्ये गट नं.४२७ देण्यात आला आहे. प्रतिवादी नं.१ आणि धोंडीबा रामलिंग दराडे यानी गट नं.४२७ मधील जमीन एकत्रीत खरेदी घेतली आहे. धोंडीबा रामलिंग दराडे हा मयत असून त्याचे वारसांना वादीने दाव्यात पार्टी न केल्यामुळे वादीचा दावा नॉन जॉईन्डर नेसेसरीज् च्या तत्वानुसार चालू शकत नाही. तसेच कैफियतीच्या खरी वस्तुस्थिती मध्ये पेज नं.३ वर पॅरा नं.३ च्या सदरात पॅरा नं.३ मधील दुसरी लाईन जमीन स.नं.७/अ च्या पुढे ७/ग असे लिहिण्यास परवानगी देण्यात यावी.

04. Plaintiff has filed her common say at Exh.105 and resisted the same by taking strong objection. It is contended by her that, applications are filed intentionally to prolong the suit. According to plaintiff, she has described the block numbers of land for which she claimed partitioned hence, before consolidation scheme what was the survey number of present block, does not make any difference. Hence, amendment required to be rejected. She further contended that, there is only a well in block No.198 adm. 2R situated at village Rameshwar, Tal. Bhoom wherein defendant No.1 is also having his share. The present suit is filed for partition and separate possession and not for

measurement and demarcation of boundaries of block No.427 situated at village Rameshwar which was purchased by defendant No.1 from the income of Hindu joint family and therefore, plaintiff is not required to make party of legal heir of deceased Dhondiba Ramling Darade. 7/12 extract of block No.427 further reveals that, defendant No.1 has transferred the land to his brother's wife namely Shivshala Arun Darade during the pendency of suit. For that purpose plaintiff is going to file application for amendment. Thus, she prayed to reject both the applications.

05. Perused the record. Heard the arguments advanced by learned advocate for plaintiff and defendants. Following points arise for determination and findings thereon and reasons thereof are as follows:

Points	Findings
1. Whether defendants satisfy that the proposed amendments are necessary for determining the real question in controversy between the parties?	YES
2. What order?	The applications are allowed.

REASONS

AS TO POINT NO. 1 :

06. Defendants in the present application have prayed for amendment in their pleadings as per Order VI Rule 17 of the Code of Civil Procedure. Order VI Rule 17 of the Code of Civil Procedure enumerates the circumstances under which the court may allow either

parties to amend their pleadings. The relevant provision of the Code of Civil Procedure is reproduced below:

*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.

07. At the outset, it would not be out of milieu to refer here that the trial of the present suit has commenced. On this background, in order to amend the pleading as to inserting survey numbers will have to satisfy this court the proposed amendment is necessary for determining the real question of controversy between the parties.

08. The present suit is filed for partition and separate possession against defendants. Herein, plaintiff claims her share over the suit lands. Perused the plaint. It shows that she has mentioned that the suit land is ancestral property of plaintiff and defendants. As the suit land is alleged to be ancestral property of plaintiff and defendants and plaintiff is seeking share in those lands. Therefore, it would be necessary for the defendants to defend that the suit lands are self acquired property of defendant No.1 and plaintiff does not have any share. Considering the nature of suit, it would be necessary for the defendants to add all necessary facts supporting their claim over the

suit lands if any, which were left to be added. Hence, if defendants are not allowed to add facts supporting their claim, it would be difficult to determine the real question of controversy between the parties at the time of trial. Moreover, inserting survey number of present block numbers will make easier for the defendant as well as court to determine actual controversy between the parties. Therefore, it would be just and proper to allow the defendants to amend their pleadings.

09. It is necessary to note that due to insertion of proposed amendments in the written statement, it would be easy for identifying the properties and without which it would not be possible to properly identify the rights of the parties. Hence, the proposed amendments are necessary in order to determine the real controversy between the parties. Hence, I accordingly answer Point No. 1 in the affirmative.

AS TO POINT NO. 2 :

10. Considering the nature of proposed amendments, the above facts & circumstances of the case, no prejudice would be caused to the plaintiff. Moreover, inserting survey numbers of present block numbers would not change the nature of suit. It is to be noted here that, the defendants have moved the present applications after commencing the trial even after laps of several years of filing their written statements. Due to in action of defendants, plaintiff caused in convenience and therefore, it would be just and proper to impose cost upon defendants. Therefore, based on the above aspects following order is passed:

ORDER

1. The applications at **Exhibit 98 & 100** are allowed subject to cost of **Rs.500/-** (Rupees Five Hundred only) each defendant to be paid to plaintiff on or before next date, failure to which present order shall stand cancelled.
2. Defendants are directed to carry out the amendments in the pleadings within 14 days from the date of order, failing which the applications shall stand rejected.
3. Defendants are directed to supply copy of the amended pleadings immediately after carrying out the amendment failing which the application granting amendment shall stand rejected.
4. The plaintiff shall present additional plaint about the amendments so carried out, if any and if required, within 14 days from the receipt of the amended copy by them.

Date: 04.09.2024

(Husna R. Khan)
2nd Jt. Civil Judge Jr. Dn.,
Bhoom.

C E R T I F I C A T E

I affirm that, the contents of this P.D.F. file order are same, word to word, as per the original order.

Name of Stenographer	...	N. V. Koli Stenographer Grade-3
Name of Court	...	2 nd Jt. Civil Court Jr. Dn., Bhoom
Order Date	...	04-09-2024
Order signed by the Presiding Officer on	...	04-09-2024
Order uploaded on	...	05-09-2024