

CNR No. MHOS14-000494-2018

Spl. C. S. No. No. 12/2018
Manidha & Oths. Vs.
Anand & Oths.**ORDER BELOW EXH. 56**

Plaintiff No. 1 is widow. Her case is that in a family partition, her husband received his share and out of that share, he purchased suit property. But, as her husband was heavy drinker, so for bad habits and without legal necessity, he sold suit property to defendants.

2. By way of this application, she want some amendment in a suit as regard to date, when partition took place and some documentary proof as to effecting the partition. She also want her father father-in-law and brother-in-law to be joined in the present suit as a defendants.

3. Defendant No. 1 opposed proposed amendment, mainly upon the ground of delay and merit. Similar opposed is made by defendant No. 5 upon merit.

4. Perused. Heard.

5. Heard Adv. I. D. Shaikh for plaintiffs. He submitted that recently plaintiff No. 1 discovered documents as to previous partition and proposed amendment is in-consistence with the pleading of the plaintiffs that there was family partition. So, in that view, proposed amendment is necessary. He submitted father-in-law and brother-in-law are proper parties. Though, no relief is claimed against them. He prayed for allowing the amendment application.

6. Adv. Rashinkar and Adv. Kale opposed amendment on ground of delay and merit.

7. It is settled principle of law that merits and de-merits of the proposed amendment is not a criteria for allowing or dis-allowing

of amendment. The only criteria for the amendment, whether amendment is necessary, whether it was intending to delay or whether proposed amendment is after due diligence of discovery of new fact. On having gone through the pleading of the parties, it appears that plaintiffs have consistently come with the theory of previous partition in their family and to support that theory, they only just want to add date of partition and some document regarding acknowledgment of this previous partition in between the parties. So, the amendment is necessary in the sense to give both the parties equal opportunity for putting up their case. So, that real controversy in between the parties can finally resolved. Seen, from this point of view, the amendment deserves to be allowed. However, as regard to adding father-in-law and brother-in-law as a party, in my view, they are neither necessary nor proper party to the suit. Because, the suit is against the purchasers for declaration that their sale deeds are not binding upon the plaintiff's share and the sale deeds were without any legal necessity and recovery of possession and in alternate for partition among the plaintiffs and proposed purchasers. From this view, the appearance of the father-in-law and brother-in-law is unnecessary. They can be a witness, but, not a necessary party. So, amendment is deserved to be partly allowed. Hence, following order.

ORDER

1. The application below **Exh. 56** is **partly allowed**.
2. Plaintiffs are directed to carryout the amendment today itself and supply the copies of amendment plaint till next date.
3. No order as to costs.

Date :- 22.07.2025

(R.T. Ingle)
Jt. Civil Judge Sr. Division,
Paranda

CERTIFICATE

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

Name of Stenographer	-	Rehan J Kazi Stenographer (Grade-II)
Court	-	Jt. Civil Court Senior Division, Paranda.
Date	-	22-07-2025
Order signed by the presiding officer on	-	22-07-2025
Order uploaded on	-	22-07-2025