

MHPA210003952021



ORDER BELOW EXH.59 IN
R.C.S. NO. 30 OF 2021,
MANDODHARI VS. DIGAMBAR & OTHERS,
[PASSED ON 02/04/2024]

This is an application by the plaintiff for seeking amendment in the plaint as per Order VI Rule 17 of the Code of Civil Procedure, 1908.

02- Considering the contentions of rival parties following points arise for determination and my findings against each of them for the reasons are given below:-

Sr. No.	Points for determination	Findings
1.	Whether the proposed amendment is just and necessary to determine the real controversy between the parties ?	Yes.
2.	What order?	As per final order.

REASONS

POINT NO. 01 and 02 :-

03- The learned advocate for the plaintiff vehemently submitted that the instant suit is filed for partition. The plaintiff was unaware of the gift deeds No.1023/2020 and 1024/2020 executed by defendants No. 1 and 2 in favour of defendant No.3. It is further submitted that the aforesaid gift deeds are not binding upon the plaintiff. As this fact is unknown to the plaintiff the prayer in that regard is remained to be mentioned in the plaint. The plaintiff also wants to amend paragraph No.06 of the plaint and aver that defendant No.1 executed gift deeds No.1023/2020 and 1024/2020 in favour of defendants No.2 and 3 behind the back of the plaintiff. Therefore, the gift deeds are not binding upon the plaintiff to the extent of her share. The plaintiff shows a willingness to deposit the Court fee if any. Lastly, the plaintiff prayed to allow this

application.

04- Per contra, the learned advocate for the defendants filed say on the overleaf of the application and submitted that the alleged gift deeds were executed in the year 2020. The plaintiff pleaded all alleged facts in the suit. It is highly impossible to believe that, the plaintiff was unaware of the execution of gift deeds. This fact is deliberately suppressed by the plaintiff from the Court. Lastly, the defendants prayed to reject the application.

05- Before dealing with the proposed amendment, it is necessary to see the provision under order VI rule 17 of the Code of Civil Procedure, 1908. On careful reading of the aforesaid provision, it is seen that the court at any stage of the proceeding allow to amend the pleading subject to the satisfaction of the court, that the proposed amendment is just and necessary for determining the real controversy between the parties.

06- It appears from the record that the suit is filed for the partition and declaration of nullity of the sale deed. By way of the amendment, the plaintiff wants to contend that, the gift deeds executed by defendants No.1 and 2 in favour of defendant No.3 are not binding upon the plaintiff and it will not affect the plaintiff's right in any manner. The object of Order VI Rule 17 is to determine the real controversy between the parties.

07- It is seen that there is a dispute about the landed property and valuable rights of the parties involved. The proposed amendment is in respect of the gift deeds wherein the suit property was involved. It is well settled that, in the suit for partition the rights of the parties are inter-Se. Thus, a fair opportunity is required to be given to the plaintiff to put forth her case. Even otherwise, the defendants have the liberty to testify to the plaintiff on these points. Therefore, if the proposed amendment is allowed no prejudice would be caused to the defendants.

08- Indeed, this application was filed at a belated stage and caused inconvenience to the defendants. However, it can be compensated by imposing compensatory costs as contemplated under Section 35-B of the Code of Civil Procedure. Thus, I deem it appropriate to direct the plaintiff to pay a cost of Rs. 2000/- to the defendants towards causing delay in the proceeding. Hence, points No. 1 and 2 are answered in the affirmative and the following order is passed.

ORDER

- 1) Application below Exh.59 is hereby allowed.
- 2) The plaintiff is directed to carry out the necessary amendment within 14 days from the date of this order.
- 3) The plaintiff is directed to pay an amount of Rs.2000/- to the defendants towards the cost as per Section 35-B of the Code of Civil Procedure.

Date :- 02/04/2023.

(S.V. Munde)
Civil Judge Jr. Dn. Sonpeth.