



ORDER BELOW EXH. 152

1. I have perused the application and the say. I have heard arguments of both the sides. Record perused.
2. The plaintiff has filed this application as per order VI Rule 17 of the Civil Procedure Code. The plaintiff wants to amend pleadings in the plaint with respect mentioning four boundaries of the five gut numbers and correct area of those gut numbers and also entitlement of plaintiffs for 1/3rd share and correction in the valuation of the plaint due to proposed amendment of correct area. It is alleged by the plaintiff that the proposed amendments are necessary for just decision in the suit and the proposed amendments are not going to change the nature of suit and the proposed amendments are arising because of filing of written statement by defendant nos. 2 to 4 vide Exh. 84, etc.
3. The defendant nos. 2 to 4 in their say at Exh. 158 opposed this application on various grounds. It is alleged by the defendants that the application filed by power of attorney is not tenable as during cross-examination of power of attorney he admitted that he has no concern with other properties except gut no. 370 and 382 etc. it is also submitted by the defendants that it is not mandatory to give boundaries of suit properties and the proposed amendments are not necessary as it is causing prejudice



to the defendants and they are not bonafide etc.

4. If the plaint Exh. 1 is seen then it appears that in paragraph no. 2 the plaintiff has not given four boundaries and now the plaintiff wants to insert the four boundaries of the suit properties. So also para no. 2 of the plaint shows that area of gut no. 395 and 387 is not mentioned and now the plaintiff wants to insert it. So also as per plaintiff area of other gut numbers in para no. 2 of the plaint is not properly given and hence the plaintiffs want to give correct area of those gut numbers. The plaintiffs also submit that he wants to mention entitlement of plaintiffs for 1/3 share as mentioned in the present application. The plaintiff also wants to correct the valuation of the plaint due to correction in the area of the suit properties etc.

5. The Ld. Counsel for defendants argued that the trial in this case has already commenced and therefore the proposed amendments cannot be allowed. Undisputedly the trial has begun in the suit and the plaintiff has examined almost five witnesses in which power of attorney holder is the PW-1. Therefore, the defendants are required to show due diligence as to why the present application could not be filed at an earlier stage.

6. The counsel for plaintiff argued that the defendants have filed their written defence at Exh. 84 on 26.02.2024 by the



order of Hon'ble High Court. Therefore, after their written defence the proposed amendments have become necessary. The counsel for defendants referred provisions of order VII Rule 3 of CPC and argued that proposed amendments are not necessary. The counsel for defendants also argued that the amendments should be necessary for deciding real controversy in the case. The counsel for plaintiff referred provision under order III Rule 2 of CPC to the effect that power of attorney holder can file present application and also referred the document of power of attorney. I have perused the provisions.

7. In this case the oral evidence of plaintiffs is going on. Plaintiffs have examined power of attorney and other four witnesses. None of the plaintiffs entered into witness box for giving oral evidence. The plaintiffs have not closed their oral evidence. If the proposed amendments are considered then it is clear that they will not change the nature of suit. On the contrary, the proposed amendments will help in deciding the suit at once. The proposed amendments are necessary to decide real controversy between the parties. The defendant nos. 2 to 4 have filed their written defence in the case recently. If the proposed amendments are allowed then the defendants will not be taken by surprised and no prejudice is going to be caused to the defendants. Hence, I find that present application deserves to be allowed.



However, the pain suffered by defendant nos. 2 to 4 can be compensated by imposing suitable costs.

8. Now I am going to discuss citations referred by defendants. First citation is in the case of *Zarif Ahmad Vs. Mohd. Farooq, reported in (2015) 13 SCC 673*. I have perused this citation. In that citation the suit was for permanent prohibitory injunction. Present suit is for partition etc. The facts in the citation are different with the facts of present case. In the present case four boundaries are not mentioned in the plaint at the time of its institution. So with respect I say that this citation is not applicable to present case.

9. The defendants referred another citation in the case of *Janki Bhojwani Vs. IndusInd Bank, reported in 2005 (3) Supreme 275*. I have perused this citation. The facts in the citations are different with the facts of present case. In the present case, oral evidence of plaintiff is going on and they have not closed their oral evidence. The counsel for defendants failed to satisfy this court the relevancy of this citation at this stage in the peculiar facts and circumstances of this case. So with respect I say that this citation is not applicable.

10. The parameters for deciding an application to set aside no written statement order and an application for amendment are



different. The evidence of power of attorney is a matter of appreciation of evidence at appropriate stage. Hence, in light of above discussion, I pass following order:

ORDER

1. Application Exh. 152 is hereby allowed.
2. The plaintiffs are permitted to carry out amendment as sought in this application immediately.
3. Before carrying out amendment the plaintiffs are directed to pay cost of Rs. 5,000/- to the defendant nos. 2 to 4 as a condition precedent.

Dt.19/07/2024

(Md. Taher Bilal)
Civil Judge J.D., Saswad.



CERTIFICATE

I affirm that the contents of this P.D.F. file Judgment are same word for word as per original Judgment.

Name of Steno : Nitin M. Shinde, Stenographer, (Grade III)

Court Name : Shri. Md. Taher Bilal
Civil Judge Jr. Division, Saswad.

Date of Order : 19.07.2024

Order signed by P.O. on : 19.07.2024

Order uploaded on : 19.07.2024