

MHPU180002372007



ORDER BELOW EXH. No.86 IN R.C.S. No.121/2007
[Rani Korhale & Anr. Vs. Sakharam Korhale & Ors.]
(Passed on 21st September, 2024)

The plaintiffs have filed present application under Order VI Rule 17 and Order I Rule 10 of the Code of Civil Procedure (for short 'the C.P.C.').

02. As per plaintiffs, during the pendency of proceeding for restoration of suit, defendant nos.01 and 02 have created third party interest by executing sale deeds in the favour of proposed defendant nos.06 to 10. Therefore, they have now become necessary parties in this suit for partition. As it was a subsequent event, so plaintiffs have move this application immediately after the suit was restored. Hence, this application for amendment be allowed in the interest of justice.

03. Plaintiffs also relied upon following case laws :-

- i. **Pankaja and another Vs. Yellappa (D) by L.Rs. and others [AIR 2004 Hon'ble Supreme Court 4102]** in which it is held that, "*Amendment of pleading sought after substantial delay can be allowed in appropriate cases if that subserves cause of justice and avoids further litigation.*"
- ii. **Rajesh Kumar Aggarwal and Ors. Vs. K. K. Modi and Ors. [AIR 2006 Hon'ble Supreme Court 1647]** in which it is held that, "*Amendment of pleadings - Object - Provision is partly mandatory and partly directory - Test that governs issue of amendment is 'real controversy test'.*"

- iii. North Eastern Railway Administratin, Gorakhpur Vs. Bhagwan Das (D) by L.Rs. [2008 AIR SCW 3159] in which it is held that, *“Amendment of pleadings – Permissible even at appellate stage – Provided amendment does not work injustice to other party and is necessary for determination of question in controversy.”*
- iv. Rajbahaddur Jiyaram Yadav Vs. Prakash @ Pappu Jiyaram Yadav & Ors. [2016(1) ALL MR 550, in the Court of Hon’ble High Court of Judicature at Bombay (Aurangabad Bench), decided on 29th July, 2015] in which it is held that, *“Suit for partition – Amendment sought in the midst of final arguments, to include property excluded. Amendment allowed subject to conditions of payment of costs with a view to reduce hardship of other side.”*

The facts of these case laws are different from case at hand. But the ratio laid down by them are about the well settled position of law which are discussed at appropriate stage during the course of reasoning.

04. Defendant nos.01 and 02 have filed say at Exh.88 and resisted it on the ground that the alleged sale deeds were executed when the suit was dismissed and not yet restored. Further, plaintiffs had knowledge about these sale deeds earlier. But they have not taken any diligent steps. The evidence is already started. So application be rejected.

05. Heard Ld. Advocate of plaintiffs and defendants at length.

06. Perused the record. Admittedly, the suit is for partition and injunction. This suit was dismissed for default of plaintiffs on 19.09.2016. After that by filing Civil M.A. No.35/2017 the suit was

restored vide order dtd.13.01.2023. During the pendency of this proceeding, sale deeds have been executed by defendant nos.01 and 02 in favour of proposed defendants. This was a subsequent event. As the suit was dismissed, so plaintiffs could not bring this amendment earlier. After the restoration of suit plaintiffs have immediately moved this application. No doubt the evidence is begun. But considering the subsequent event and peculiar circumstances of this suit, as per proviso of Order VI Rule 17 of the C.P.C., in the interest of justice, this amendment is warranted. Similar ratio held in the case laws cited supra that in the interest of justice and to avoid further litigation, amendment can be allowed even at a later stage.

07. Therefore, in view of above discussion, in order to decide this suit on merits and to elucidate the matter in dispute and to void multiplicity of proceeding, this amendment seems necessary. Thus, in the interest of justice, passing following order :-

ORDER

01. Application is allowed subject to costs of Rs.200/- (Rupees Two Hundred only) to be paid to the Legal Aid Center, Daund.
02. Plaintiffs are directed to carry out the necessary amendment within 14 days and supply amended copies.
03. After amendment, summons be issued to newly added defendant nos.06 to 10.

Daund.
Date :- 21.09.2024.

[Smt. S. A. Virani]
Jt. C.J.J.D., Daund, Dist. Pune.

CERTIFICATE

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

Name of Steno	:-	P. D. Jagatap.
Name of the Court	:-	Smt. S. A. Virani, Jt. C.J.J.D., Daund, Dist. Pune.
Order date	:-	21.09.2024.
Order signed by the Presiding Officer on	:-	21.09.2024.
Order uploaded on	:-	21.09.2024.