

ORDER BELOW EXHIBIT 109 IN RCS NO. 12/2014

(Passed on 13/12/2017)

This is an application by the plaintiff under order 6 rule 17 of the Code of Civil Procedure (hereinafter for short 'the CPC').

[2] The present suit is for partition, alongwith declaration and injunction. The defendants appeared and filed their written statement. It is the contention of the plaintiff that the defendants have taken objection about non-joinder of necessary parties and properties. A share in the well in the suit property was sold before filing of the suit. But the names of the buyers were not recorded in the revenue extracts. Therefore, they could not be made parties to the suit. Therefore, in order to remove the objections of the defendants and the typographical mistakes, the plaintiff has prayed for the proposed amendments at Sr. No. 1 to 6, 9 and 12 as mentioned in the application.

[3] The plaintiff has further prayed for amendment in the genealogical tree. It is his contention that the common ancestor of the plaintiffs and the defendants i.e. Chima Lokhande had three wives. His first wife Bhikabai died in 1947 and second wife died in 1960. During the existence of the second marriage he married Kamlabai i.e. his third wife. According to the plaintiff the defendants are children of Kamlabai and as such they are illegitimate children of deceased Chima Lokhande. In view of this contention the plaintiff has proposed amendments at Sr. No. 7, 8, 10 and 11 of the application.

[4] The defendants strongly objected the application by

filing their say. It is the contention of the defendants that the plaintiff specifically admitted Kamlabai to be the second wife of deceased Chima Lokhande. In view of the proposed amendment at Sr. No. 7 and 8 of the application, the plaintiff is trying to raise a contrary plea which is barred by the principle of estoppel. It is the contention of the defendants that the plaintiff is trying to put forth an entirely new story than that of his previous pleading. The plaintiff is trying to withdraw the admissions which is not permissible. Lastly, it is contended that the other proposed amendments have no connection with the suit and the plaintiff failed to state as to why those amendments are prayed. Hence, it is prayed that the application be rejected.

[5] Heard Shri. M. V. Suryawanshi, the learned advocate for the plaintiff and Shri. P. M. Pardeshi, the learned advocate for the defendants.

[6] The points that arise for my determination and its findings thereon, with reasons are as under-

Sr. No.	POINTS	FINDINGS
1.	Whether the proposed amendments are necessary for determining the real question in controversy between the parties ?	YES.
2.	What order ?	The application is allowed.

REASONS

POINTS NO. 1 AND 2 :

[7] In respect of the proposed amendment at Sr. No. 7 and

8 the plaintiff proposes to amend the genealogical tree and the relations between the parties. The gist of the proposed amendment is that deceased Awdabai was the second and legally wedded wife of deceased Chima. During their marriage was in existence, deceased Chima started residing with Kamlabai, as husband and wife. The defendants are the children born out of illegitimate relation between deceased Chima and Kamlabai. The proposed amendment at Sr. No. 10 and 11 are consequential amendments in the valuation and prayer clauses as the shares of the parties will change.

[8] The learned advocate for the plaintiff submitted that the nature of suit does not change due to the proposed amendment. The present suit is for partition, declaration and injunction. Therefore, the amendment is necessary to determine the real question in controversy. Per contra, the learned advocate for the defendants submitted that the plaintiff is trying to withdraw admissions in respect of the relations of the parties. He also submitted that a new case is put forth by the plaintiff. In support of his contentions he relied on the judgment of the Hon'ble Bombay High Court in **Uttam @ Ratnakar Pandurang S. Hodarcar V. Premanand Fotu Fadate 1996 CJ (Bom) 599**.

[9] At the outset, it is necessary to mention that trial of the present suit is yet to begin and therefore, there is no embargo of proviso clause appended to order 6 rule 17 of the C.P.C. to hear the application for amendment. The present suit is for partition and other reliefs. Therefore, the main question involved in the present suit is about the shares of the parties to the suit. In order to

determine the shares, the relations of the parties are material. A change in relation can change the shares of the parties in a suit for partition. Having said that in my opinion, it is necessary that the real relations between the parties must come on record to completely and finally adjudicate the suit. In respect of the submission of the learned advocate for the defendants in my opinion, the amendment will not amount to withdrawal of admissions in any way. In order that a fact must become an admission it must be asserted by one party and the other party must agree with the same. In that situation it will amount to admission by the party putting his agreement to the fact. In the present case the plaintiff has pleaded his case. Mere pleading a case cannot amount to admission in my opinion. If mere pleading of case is admission then no amendment to the plaint could ever be allowed, as it would amount to withdrawal of admission every time. Therefore, the submission of the learned advocate for the defendants in that regard cannot be accepted.

[10] In the decision of Uttam @ Ratnakar *supra* referred by the defendants, it was the defendant who moved an application for amendment. In that scenario it was held by the Hon'ble High Court that amendment which would change the nature of the case of the defendants totally cannot be allowed. In my humble opinion, the facts of the above judgment are different from the present case. In the case at hand the proposed amendment is in no way changing the nature of the suit.

[11] Further, in respect of the proposed amendments at Sr. No. 1 to 6, 9 and 12 of the present applications. The aforesaid

amendments are not seriously objected by the defendants while advancing their arguments. The aforesaid proposed amendment regarding adding of properties, parties and correction of typographical errors would not change the nature of the suit nor it will affect on the right of defendants. Defendants may file their reply to such amendment with the leave of the Court. The aforesaid amendments are technical in nature and are very much necessary to determine the real question in controversy between the parties.

[9] In view of the above discussion, I am of the opinion that the proposed amendments are necessary to determine the real question in controversy between the parties. Hence, I answer point No. 1 in the affirmative and pass following order to answer point No. 2-

ORDER

The application is allowed.

The plaintiff to carry out the proposed amendment in the plaint and furnish the copy of amended plaint on or before next date without fail.

Costs in Cause.

Date : 13/12/2017
Place : Ghodegaon

Bhanupratap Chouhan
Jt. Civil Judge Junior Division