

Order below application vide Exh.32 in Spl.C.S.No.313/2024.

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The present application is filed by the plaintiff under Order VI Rule 17 r/w Order 1 rule 10(2) of The Civil Procedure Code, 1908 (hereinafter referred as The C.P.C. for the sake of brevity) for amendment of plaint to the present suit.

2. The present suit is filed by the plaintiff for declaration and permanent injunction etc.

3. The plaintiff through his application proposes to carry out the amendments with regards to the contention that plaintiff no.1 Renuka Developers Through Partner 1/1 be deleted from the said suit as the said defendant is not at all connected with the said suit. The suit property has only been developed by defendant no.1/2 and the plaintiffs have entered into a compromise with the said defendants. The partnership between the said defendants has come to an end on 19/05/2014. Hence, the liability of defendant no.1/1 does not arise. Hence the plaintiff wants to delete defendant no.1/1 from the said suit.

4. The say was filed on the present application by defendant no.1/1 and have stated that the said defendant was never connected with the present suit property and that the suit property was developed by defendant no.1/2. As the plaintiff and defendant no.1/2 have entered into a compromise outside court it is necessary that defendant no.1/1 be deleted from the present

suit. The said fact that the said defendant was not a necessary/ proper party to the suit yet had filed the said suit against the said defendant. This has caused mental and economical loss to the said defendant. Hence, it is prayed that the said application be allowed subject to heavy cost.

5. Perused the application and the say. Also perused the records, heard the Ld. Advocates for the plaintiff as well as defendants. Considering, all of the above following points arise for my determination and their answers along with the reason for them are recorded as under. I hereby proceed to decide the application.

<u>Sr. No.</u>	<u>Points for Determination</u>	<u>Findings</u>
1	Whether plaintiff is entitled for the amendment sought for?	Yes
2	What order?	As per final order

REASONS

AS TO POINT NO. 1 :

Amendment of pleadings : The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as many be just, and all such amendments shall be made as may be necessary

for the purpose of determining the real questions in controversy between the parties :

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

6. It is also necessary to peruse Order 1 Rule 10 of the C.P.C. for the purpose of effectual decision of this application. The said Rule provides as under:

“Court may strike out or add parties.—*The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name, of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.”*

7. The purpose of this provision is to bring before the Court, at the same time, all the persons interested in the dispute so that the dispute may be finally determined at the same time in the presence of all the parties without any delay, inconvenience and expense of several actions and trials and inconclusive adjudications.

8. On perusal of the plaint, it appears that the said suit is filed for declaration and permanent injunction etc.

9. With regards to the proposed amendments admittedly in the present matter, trial has not yet commenced, hence present application is maintainable.

10. Connecting the dots to the present case, on perusal of the record, it appears that defendant was the partnership firm and earlier defendant 1/1 and 1/2 were the partners to the said firm. However, there was admission cum retirement deed of partnership dated 19/05/2014. It appears that defendant no.1/1 today is not concern with the partnership firm. Also the plaintiffs does not want to proceed against the defendant no.1/1 for reasons to stated. Most importantly the development over the suit property was done by defendant no.1/2.

11. It is necessary to note that, the plaintiff is dominoes litus has right to choose his adversary against whom he wants to fight and whom he wants to seek relief and other way round. It wouldn't be within the per view of the Court to interfere with the

right of the plaintiff of adding and striking of the parties unless and until the Court finds it necessary that the question involved in the suit cannot be completely decided without the presence of such a party and in my view, it would be necessary to delete the said defendant from the present suit as the relief claimed by the plaintiff in the present suit would not be effectively and completely adjudicated upon without allowing the amendments as sought for. No Court would grant the reliefs claimed for by jumping from one end of the bridge to the other without traveling the bridge in real and without pondering upon the evidences put forth as, for now it is apparent from the record that the relief as sought for through the present application needs to be given to the plaintiff for effective adjudication. Hence, to avoid multiplicity of the suits which is the dominant object behind allowing the amendment application and for determining the real question in controversy between the parties the said amendments are necessary. However, the present application in my opinion would not cause serious injury or loss to the other party, however on the other hand defendant no.1/1 has agreed upon allowing the said application subject to heavy cost. Also defendant no.1/2 has not objected the present application. Hence, in the circumstances the present application is required to be allowed. Hence, I answer point No. 1 in the affirmative.

12. However, the present application in my opinion would not cause serious injury or loss to the other party, however on the other hand the defendant is at liberty to file the written statement

over the same and as per law leaves them at liberty to deny or accept the contentions made in the plaint. The gamut of the discussion made above is that the application is liable to be allowed subject to cost as defendant no.1/1 was made a part of the suit and they are being deleted on the wish of the plaintiff considering the consistency which is arose of between the plaintiff and defendant no.1/2 i.e they have entered into the compromise outside the court. Hence I answer point no.1 in the positive. In view of the same, I proceed to pass following the order.

AS TO POINT NO 2:

13. In the gamut of the discussion made in point No. 1 I, am of the view that the application is entitled to be allowed with cost and hence in view of the same, I proceed to pass following the order.

ORDER

1. Application is hereby allowed subject to cost of Rs. 2,000/- to be paid to the defendant no.1/1.
2. Plaintiff is directed to carry out the amendment within 14 days from the date of this order.

Date:12/09/2025

(UmaY.Borade-Kapoor)
4th Jt. Civil Judge, S.D.,Panvel.