

MHRG140004152023



RCS No. 71/2023

Order below Exhibit 62

This is an application filed by the plaintiff praying to amend the plaint.

2. It is contended by the plaintiff that, the suit is for declaration, partition, and separate possession. In paragraph no.1 of the plaint, the plaintiff included properties bearing Survey Nos. 1 to 12 in Village Vindhane and Village Harischandra Pimpale as her assets. However, among these, the property in Survey No. 26 (Hissa No. 3) and Survey No. 27 (Hissa No. 3) in Village Harischandra Pimpale are not owned by the plaintiff. The record of rights shows the name of Defendant No. 1 as the titleholder, and the beneficiary user/occupant is the Salehat Faizulauam Waqf Institution. The plaintiff inadvertently included these waqf properties in the plaint. Since these properties belong to the Waqf institution and not to the plaintiff, their exclusion from the suit is necessary. Hence, plaintiff seeks to strike out Survey Nos. 26 and 27 (Hissa No. 3) from paragraph no.1 of the plaint under Order 6 Rule 17. The amendment will not alter the character of the suit, will not prejudice the defendants' rights, and is required to avoid multiplicity of litigation and properly adjudicate the rights of the parties.

3. No defendants filed their say to this application, except defendant no.1, 4, 5 and 12. Defendant no. 1, 4, 5 and 12 filed their say submitting that, this application filed by the plaintiff was filed only after the defendant had already filed an application under Order 7 Rule 11 of

the CPC at Exh.48. The plaintiff has also filed a reply to that application. When the matter was listed for arguments on application at Exh.48, the plaintiff chose to file the present amendment application on the same day. The application marked as Exh.48 is still pending before this Court for hearing prior to this application. Therefore, it is important that arguments on Exh. 48 be heard before the amendment application. Further, the affidavit filed along with this application is incomplete and does not clearly specify which properties are proposed to be deleted. For these reasons, hence, prayed to reject the application.

4. Perused the application, say, supporting affidavit, documents filed on record.

5. It is not disputed that the plaintiff seeks a declaration, partition and separate possession of the properties set out in paragraph no.1 of the plaint. The only issue raised by the defendants in reply to this amendment application relates to procedural timing, pending application under Order VII Rule 11 CPC (Exh.48), and alleged insufficiency of the supporting affidavit. No substantive objection has been raised that the properties sought to be excluded are part of the plaintiff's title or interest. Order VI Rule 17 CPC permits amendment of a plaint at any stage of the proceedings to correct errors or omissions, provided the amendment does not change the nature of the suit or cause prejudice to the opposite party which cannot be compensated in terms of costs. The proposed deletion of properties that the plaint erroneously included does not alter the relief claimed nor does it affect the fundamental character of the suit. Moreover if an error is pointed out by the defendants, then the plaintiff may be permitted to rectify it. Further, there is no material on record to show that the exclusion of these properties would prejudice the defence of any party. But at the same time addition of the Waqf property initially in the plaint,

which cost delay in the proceeding deserves to be compensated. Hence, the order:

ORDER

- I. Application is allowed subject to cost of Rs.3,000/- each to defendant no.1, 4, 5 and 12 till next date.
- II. The plaintiffs shall carry out proposed amendment as mentioned in application at Exhibit 62 within 14 days from the date of this order and then place amended application and it's copies on record.

Place : Uran
Date : 11.02.2026

Sd/-
(M. S. Quazi)
Civil Judge, J.D., Uran