

**Order below Exh. 50 in Civil M.A. No. 11/2021**

(CNR no. MHRT0800001532021)

By the present application, the respondent has prayed for leave to amend his reply (Exh.40) filed on 08/06/2022. It is contended that, the contentions as to non-maintainability of the present application need to be incorporated. Further, various proceedings which have taken either between or concerning the parties need to be referred to. According to the respondent, he fought or filed the litigation and proceedings to prevent unlawful dealing with the properties whenever he learnt about the same. Thus, according to him, the proposed amendment needs to be allowed. If it is not allowed, he would be prevented from agitating the legal pleas. In such case, he would be deprived from his legal rights. Hence, he prayed for allowing the present application seeking the amendment.

02. The (main) applicant Pranav Pujari has filed reply at Exh. 52 and opposed the application. According to him, the contentions sought to be raised by present application are false. Only to delay the present proceeding and to deprive him from rights in the property, present application is made. Further, the trial of the suit has already commenced. Therefore, the applicant Pranav has prayed for rejecting the present application made by the respondent.

03. Perused the record. Heard both sides.

04. Learned advocate for the respondent has submitted that, the respondent is aged 82 years. He has engaged an advocate Mr. Ganoo. Through said advocate, the respondent has filed his reply.

No doubt, it was duty of the respondent to give full information and instructions to the concerned advocate for filing reply. However, due to the reasons of his old age or may be for some other reasons, respondent could not give such instructions and information. Therefore, in the reply filed, reference as to some earlier proceedings before the Courts or revenue authorities could not be made. Thus, if the amendment is allowed, the main applicant Pranav would not suffer any loss. Hence, he prayed for allowing the application.

05. Learned advocate for the main applicant Pranav, on the other hand, submitted that, present application is based just on false facts and contentions. The application is made only to delay the present proceeding. This is a proceeding for recognition of legal heirs. Such a proceeding is expected to be concluded within 2 to 3 months at the most. It is pending since long. Thus, it is clear that, it is inspired by an intent to delay the same. If the respondent went on seeking such amendment after amendment, the proceeding would be prolonged. Such applications are made only with ulterior motive to deprive the applicant from his legal rights in the property. Therefore, present application is liable to be rejected, according to learned advocate.

06. Having heard both sides, following points arise for determination. Findings thereon are recorded for reasons to follow -

Sr. No.	Points	Findings
1.	Whether the proposed amendment deserves to be allowed?	Yes
2.	What order ?	As per final order

REASONS

As to point no. 1

07. Rule 17 of Order VI of CPC provides that, Court may allow either party to amend the pleadings in such manner and on such terms as may be just and all such amendment shall be allowed which are necessary for the purpose of determining real questions in controversy between the parties. The proviso appended to the said provision provides that, the amendment shall not be allowed when it is sought after commencement of trial, unless the party seeking shows that, despite of due diligence, it was prevented from asking the same before commencement of trial.

08. Noticeably, present proceeding was filed by applicant Pranav without making anybody party to the same. Thereafter, this Court has ordered publication of notice. Initially, no objection was raised by anybody. The applicant Pranav has then filed affidavit (Exh. 14) in lieu of examination-in-chief on 30/10/2021. A pursis (Exh. 15) closing his evidence was filed on that day itself. Thereafter, on 07/01/2022, the applicant has filed additional affidavit.

09. Thereafter, the respondent Anant Kulkarni has appeared to contest the proceeding. He has filed reply at Exh. 40.

10. By the present application, amendment by way of incorporating several paragraphs to state about different proceeding concerning the parties is sought for. Noticeably, it is settled principle of law that, while dealing with an application for amendment, court need not to go into trustworthiness of the proposed amendment. Whether the contentions sought to be stated by way of amendment are true or not is a question to be decided in light of evidence to be adduced by the parties. It cannot be so decided while hearing or deciding an application seeking

amendment. Moreover, liberal approach is necessary to deal with an application seeking amendment to the written statement or reply by the defendant or the respondent.

11. Thus, the contentions raised by the main applicant Pranav that the contentions sought to be incorporated by way of amendment are false, cannot be considered at this stage.

12. True it is that, the proceeding for recognition of legal heirs has to be concluded within a reasonable time and without any undue delay. That in itself does not mean that when an amendment can be otherwise allowed, shall not be allowed because it may cause some delay to the proceeding. It is for the apparent reason that, purpose behind every litigation is to reach the truth. Truth is the only criteria to govern administration of justice. The truth can be reached if parties to the civil litigation are afforded every reasonable opportunity to put their pleadings and to adduce evidence.

13. The contentions as to some previous proceedings are sought to be incorporated by way of proposed amendment. Thus, if same is allowed, it may not cause harm to the main applicant. On the other hand, if the respondent is not allowed to carry the proposed amendment, he may be deprived from putting his case before the Court. Moreover, though, the affidavit in examination-in-chief and additional affidavit are already filed, it cannot be forgotten that, the respondent has appeared in the proceeding thereafter. Under such circumstances, the proposed amendment cannot be said to be bad due to applicability of the proviso to Rule 17 of Order VI. Further, considering age of the respondent, his failure in putting all the contentions at the time when the reply was originally filed at Exh. 40 cannot be viewed to prevent him from putting the same at this stage. Proposed amendment seems helpful for the purpose of deciding real controversy between the parties. Thus, in view

of all the aforesaid circumstances and discussion, proposed amendment deserves to be allowed. Hence, point No.1 is answered in the affirmative.

As to point no. 2

14. In view of affirmative finding as to point no.1, present application deserves to be allowed. Therefore, I pass following order -

ORDER

1. Application is allowed.
2. The respondent is permitted to carry the amendment, as prayed, in the reply (Exh. 40).
3. The amendment shall be carried and amended reply and copies thereof be filed on or before next date.

Date :- 22/11/2022

(B. D. Tare)
Civil Judge (J.D.)
Deorukh.

- : C E R T I F I C A T E : -

Judgment/order in (Order below Exh. 50 in Civil M.A. No. 11/2021)

I affirm that the contents of this Pdf file order are same words as per original order.

Name of Stenographer	:- S. S. Thaware (Jr. Clerk)
Court Name	:- The Court of Civil Judge (J.D.) & Judicial Magistrate F.C., Deorukh
Date of decision	:- 22/11/2022
Order signed by PO. on	:- 22/11/2022
Order uploaded on	:- 23/11/2022