

**ORDER BELOW EX.38**

In Reg. C. S. No. : 94 of 2022
CNR : **MHRT080007952022**

Janardan Devaji Nachare
Vs
Dattaram Devaji Nachare etc 4

Order Dated : 3rd August 2023

- Suit is for partition and separate possession of the suit property.
- Application is filed by plaintiff under the provisions of Order VI Rule 17 of the Code of Civil Procedure seeking amendment to the plaint.
- The plaintiff is contending that suit is for partition of suit property. The written statement by the defendant nos. 1 to 3 is filed at Exh. 30. By way of the written statement, defendants have contended that deceased brother of plaintiff Maruti had defendant no. 2 and 3 as sons. Apart from this Maruti had one daughter called Vijayanti. She isn't made a party to the suit. Hence, she needs to be impleaded as a party.
- The fact was not known to plaintiff as Maruti used to live out of town. Hence, plaintiff wasn't in contact with him. There were previous dispute pending pending between

plaintiff and Maruti. Even after the death of Maruti, his legal heirs hasn't completed further formalities and entered their name on revenue record as a legal heir. Hence, plaintiff had no idea that Maruti had one daughter. Since the suit is for partition of suit property, all the parties are needed to be impleaded. Hence, the amendment which plaintiff is pursuing is very formal in nature. No nature would change of the suit in case amendment is allowed. The application is supported by an affidavit.

- It is the contentions of plaintiff that, the proposed amendment is of formal nature and it will not change the nature of the suit. The proposed amendment is necessary to determine the real controversy between the parties. If plaintiff is not allowed to amend his plaint, he will face severe hardship and injustice. On the other hand, it will not cause any prejudice to defendants and this Court would be in a position to decide the suit on merits.
- To this application, say of the defendant was called. The say is filed at Exh. 40 by way of which has resisted the application. They contented that, the say that plaintiff had no idea that Maruti had one daughter is ridiculous. Plaintiff and Maruti were real brothers of each other. In such a case, this amendment is proposed only to fill up the lacuna shown in written statement. Hence application be kindly rejected. If hon'ble Court finds that the said

amendment is necessary at this stage, heavy cost be imposed on plaintiff.

- Heard Advocate Mr. *M. M. Shahane* for plaintiff and Miss. Adv. P. P. Kansare for defendant Nos. 1 to 3. Suit has proceeded ex parte against defendant no. 4.
- Perused Plaint, Written Statement, Application and the Say. After going through the material on record following points arose for my consideration to which I record my findings for the reasons mentioned therein.
- **Points for consideration :**

S. N.	Point	Finding
1	<i>Whether the proposed amendment is necessary for the purpose of determining the real question in controversy between the parties</i>	YES
2	<i>What Order?</i>	<i>Application is allowed</i>

REASONS

- **AS TO POINT NO. 1 AND 2** I have gone through the provisions of Rule 17 of Order VI of the Code of Civil Procedure. This provision of law gives powers to the Court to allow the parties to amend their pleadings.
- The proposed amendment does not change the fundamental character of the suit, mere allowing the amendment application in itself couldn't amount to

granting the relief sought in the proposed amendment. The burden still remains on the plaintiff to establish the claim made through the proposed amendment. No serious prejudice will be caused to the defendant if proposed amendment is allowed.

- The cardinal test for deciding an application for amendment is that :

(i) Whether the amendment is necessary for the determination of the real question in controversy ?

(ii) Can the amendment be allowed without injustice to other side ?

If the first condition is satisfied that the amendment is necessary to decide the “real controversy” between the parties, the amendment should be allowed. In other words, if there is no necessity to decide the “real controversy” between the parties, the amendment should not be allowed.

Like the first condition, the second condition is also equally important, according to which, no amendment will be allowed which will cause injustice to the opposite party. It is settled law that the amendment can be allowed if it can be made without injustice to the other side. But it is also a cardinal rule that “there is no injustice if the other side can be compensated by costs. Following principles to be borne in mind while dealing with the applications for amendment of pleadings.

- a) Provisions relating to amendment of pleadings must be liberally construed with a view to promote the ends of justice and not to defeat them.
 - b) The purpose and object of the rules of pleadings is to decide the real controversy between the parties and not to punish them for their mistakes, negligence or shortcomings.
 - c) The exercise of discretionary power must be governed by judicial considerations and the wider the discretion, the greater care and circumspection.
 - d) Rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the court.
 - e) The court should not go into correctness or falsity of the case in the amendment, while dealing with the application for amendment.
- Trial has not yet commenced in this suit. Hence, no prejudice is likely to be caused to defendants. They shall get an opportunity to challenge the newly inserted pleadings. Considering the nature of the proposed amendment, I am of the opinion that, it will assist this Court to determine the real questions in controversy between the parties.
 - The only thing is the delay in filling the application for amendment and filling up the lacuna shown in w.s. of the

defendant, should be properly compensated by awarding cost. I therefore answer Point No. 1 as Yes and pass following Order for point No. 2:-

ORDER

- 1) Application is allowed subject to cost of Rs. 300/- to be deposited by plaintiff in the Court and it be paid to defendant no. 1 to 3.
- 2) Plaintiff is at liberty to carry out the proposed amendment within 14 days
- 3) After carrying out the proposed amendment plaintiff shall file amended copy of plaint.
- 4) After filing of amended copy of plaint defendant no. 1 to 3 will be at liberty to file additional Written Statement, if any, within stipulated period.
- 6) Parties to note and comply.

Place : Deorukh.

Date : 03/08/2023

[Shruti H. Patil]

Jt. C.J.J.D, Deorukh