



**ORDER BELOW EXHIBIT 53 IN (I.A. No. 1/2020) R.C.S.
NO. 69/2014**

The is a suit for partition and separate possession of the suit properties. The present application is filed by the plaintiff for carrying out amendment in the plaint under order VI rule 17 of the Code of Civil Procedure.

02. Perused the application and say. Heard Ld. Advocate for the plaintiff Shri. M. B. Sukali and Ld. Advocate for the defendants smt. R.A. Mondkar.

03. It is submitted by the plaintiff that suit has been filed for partition and separate possession. The defendant no. 2 has filed written statement below exh. 40. In written statement defendant has made statement that they have purchased two Acer 1 guntha out of the suit property. It is submitted that the plaintiff has made wrong statement in the plaint that he and defendant no. 3 to 5 have 4 Ana share in the suit property. The plaintiff received old documents in respect of the suit property. The plaintiff had filed an application at exh. 24 but that application was rejected with liberty to filed fresh application. Thereafter, application at exh. 35 is filed by plaintiff which also came to be rejected. The plaintiff has recently received some documents and he want to carry out amendment to that effect in the plaint. The plaintiff wants to delete some portion and to add some portion in the plaint. The plaintiff wants to delete portion in the plaint claiming 4 ana share in the suit property and to add contents regarding tenancy.

04. Defendants have strongly objected and submitted that application is false and frivolous. No decision is given by the tenancy Court, so as to show that the plaintiff is tenant. Plaintiff was never in possession of the suit property. The defendants have preferred tenancy appeal no. 44/2019 against the order passed by the tenancy Court which is pending before the appellate authority. The plaintiff has not produced documentary evidence on record showing that suit property was sold to plaintiff being tenant. The

judgment given by the tenancy Court is against the law which is challenged in appeal. If the application is allowed the defendants will suffer irreparable loss. With these contentions, the Ld. Advocate for defendants have prayed for rejection the application.

05. I have gone through the record of proceeding of the case. Perused the plaint, written statement documents placed on record. It is worth to note that, application at exh. 24 and 35 which were previously filed by the plaintiff to carry out amendment in the plaint so as to change the contents from 4 Ana rights to 10 Ana rights were rejected by my Ld. Predecessor. It is pertinent to note that, the plaintiff has produced on record photocopy of the judgment of tenancy Court in tenancy proceeding. Prima-facie perusal of the said order shows that, the plaintiff approached before the tenancy Court U/sec. 32G of the tenancy act and that application is allowed by the tenancy Court on 04/07/2019. By way of present application, the plaintiff wants to add contents with regards tenancy proceeding which is decided by the tenancy Court. It is further pertinent to note that, Appeal has been preferred against the said judgment of the tenancy Court. Merely allowing the plaintiff to amend the plaint will not cause any prejudice to the defendants. Whatever propose amendment is prayed by the plaintiff, it is to be seen on the basis of merit after considering evidence. Both parties have ample opportunity to lead evidence, therefore, there is no question of prejudice to the rights of the plaintiff. In view of the above facts and circumstances it will be just and proper to allow plaintiff to carry out amendment in the plaint. Hence, I pass following order-

ORDER

1. Application is allowed.
2. Plaintiff is directed to carry out amendment in the plaint as prayed within 14 days from this order and to file amended plaint.
3. The Ld. Counsel for the plaintiff to comply.

Date : 11/07/2022
Place : Malvan.

Amardeep D. Tidke
Civil Judge Junior Division Malvan.