



**CNR No. MHSI070004792018**  
**Order passed below Exh. No. 111**  
**in R.C.S.No. 94/2018**

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The present application has been filed by the plaintiff under Order VI Rule 17 of the Code of Civil Procedure seeking amendment of the plaint.

2. It is the contention of the plaintiff that he has filed the present suit for partition and separate possession of the suit property. Defendant Nos. 1A, 1B, and 1D, in their written statement, have denied the plaintiff's relationship and alleged that the plaintiff fraudulently entered his name in the revenue record. According to the plaintiff, the said statements are false and misleading. Therefore, the proposed amendment is necessary for proper adjudication of the dispute. The amendment does not change the nature of the suit or introduce a new cause of action and no prejudice will be caused to the defendants if the amendment is allowed. On the contrary, refusal of the amendment would cause serious prejudice and irreparable loss to the plaintiff. Hence prayed to allow the application.

3. The application is resisted by defendant Nos. 1A, 1B, and 1D by filing a reply at Exh.113. They contended that the application under consideration is false, frivolous, and not maintainable in law. According to these

defendants, the plaintiff had sufficient opportunity to plead all material facts regarding his alleged rights in the suit property at the time of filing the suit in the year 2018, but failed to do so. The plaintiff has also not explained the delay or shown any valid reason for seeking amendment at this stage. The defendants further contend that no new circumstance has arisen requiring amendment of the plaint and that the present application has been filed only to fill up lacunae after the interim application filed by defendant No. 1D. Therefore, these defendants have prayed for rejection of the application with costs.

4. Perused record. Heard both sides.

5. By way of the proposed amendment, the plaintiff seeks to incorporate that Shri Shrikrishna Ganesh Samant executed a registered Will dated 15/05/2009 in favour of the plaintiff, pursuant to which the suit property and other properties came to be mutated in his name in the revenue records. Mutation Entry No. 992 was certified on 18.11.2015, and since then neither the defendants nor any other person has challenged the said Will or mutation entry before any competent authority. Therefore, according to the plaintiff, the defendants are estopped from disputing the validity of the said Will and mutation entry.

6. The nature of the amendment is clarificatory and explanatory in nature. The proposed amendment seeks to elaborate the source of the plaintiff's title and possession by incorporating particulars of the registered Will and subsequent mutation entries. The proposed amendment does not change the nature of the suit, introduce a new cause of action, or alter the reliefs claimed in the plaint. It is intended only to provide better particulars regarding the plaintiff's existing claim over the suit property.

7. The proposed amendment is necessary for determining the real controversy between the parties. Though issues have already been framed, no affidavit of evidence on behalf of the plaintiff has yet been filed on record. Therefore, it cannot be said that the trial has commenced. As the trial has not commenced, the proviso to Order VI Rule 17 of the Code of Civil Procedure does not come into operation, and therefore the plaintiff is not required to establish due diligence at this stage.

8. It is also a settled principle of law that the correctness or truthfulness of the proposed amendment cannot be examined while deciding an application for amendment. The proposed amendment is necessary for effective adjudication of the dispute between the parties. No prejudice would be caused to the defendants, as they would have sufficient opportunity to file an additional written

statement. Any inconvenience caused to the defendants can be adequately compensated by imposing costs upon the plaintiff. Therefore, the application deserves to be allowed. Hence, the following order,

<b>ORDER</b>	
1	The application below Exh. 111 is allowed, subject to payment of costs of ₹1,000/- by the plaintiff to the defendants on or before the next date.
2	Upon payment of costs, the plaintiff shall carry out the amendment on or before the next date and shall file an amended copy of the plaint on record.
	(Pronounced and dictated in open Court.)

Place : Malvan  
Date : 18/05/2026

Sd/-  
M.K.Fakih  
Civil Judge J.D. Malvan.