

ORDER BELOW EXH 204

The present application is filed by Defendant No. 1 under Order VI Rule 17 of the Code of Civil Procedure, 1908, seeking amendment to the written statement (Exh. 34). The plaintiff has filed say in opposition at Exh. 205. I have heard the learned advocates for both sides at length. I have also perused the application, say, and the material on record.

2. The case of the Defendant No. 1, as set out in the application, is that the suit is presently fixed for recording of evidence of the plaintiff and due to change of advocate, the defendant has recently scrutinized the entire record and documents. It is contended that certain material pleadings could not be incorporated in the written statement earlier, though there was no negligence but only inadvertent omission. It is further contended that subsequently, certain documents from revenue and government records have been obtained, and upon perusal thereof, it has become necessary to incorporate additional pleadings so as to effectively contest the claim of the plaintiff. The defendant submits that the proposed amendment is only explanatory and elaborative in nature, and is intended to bring on record the true facts regarding the nature of the suit property, the effect of proceedings under tenancy law, the jurisdiction of the civil court, and the aspect of non-joinder of necessary parties. It is specifically contended that no new defence is being introduced and no prejudice would be caused to the plaintiff if the amendment is allowed, whereas refusal would cause serious prejudice to the defendant.

3. Per contra, the plaintiff has opposed the application by filing say at Exh. 205. It is contended that the application is false, illegal, and

filed only with a view to delay the proceedings. It is submitted that the suit has already reached the stage of trial and is fixed for cross-examination of the plaintiff, and therefore, at such a belated stage, the defendant has no right to seek amendment. It is further contended that the written statement was filed long back jointly by all defendants, whereas the present application is filed only by Defendant No. 1, which itself renders the application untenable. It is also contended that the sole ground of change of advocate cannot be a valid ground for amendment. The plaintiff has further pointed out that there is inordinate delay of about 15 to 16 years in seeking amendment, which is not explained satisfactorily. It is also contended that the proposed amendment seeks to raise jurisdictional objections and other pleas which ought to have been raised at the earliest point of time, and that the same would result in changing the nature of defence and reopening of the entire case. It is, therefore, prayed that the application be rejected.

4. Having considered the rival submissions, it is necessary to advert to the provisions of Order VI Rule 17 CPC. The said provision enables the Court to allow amendment of pleadings at any stage of the proceedings, if such amendment is necessary for determining the real questions in controversy. However, the proviso mandates that after commencement of trial, amendment shall not be allowed unless the Court is satisfied that despite due diligence, the party could not have raised the matter earlier.

5. In the present case, it is an admitted position that the trial has commenced and the matter is at the stage of cross-examination of the plaintiff. Thus, the proviso is clearly attracted. At the same time, the Court

is also required to balance the procedural restriction with the overarching objective of doing substantial justice between the parties.

6. The Hon'ble Supreme Court in ***Revajeetu Builders & Developers v. Narayanaswamy & Sons (2009) 10 SCC 84*** has laid down that while dealing with amendment applications, the Court should consider whether the amendment is necessary for determining the real controversy, whether it introduces a new or inconsistent case, whether it would cause prejudice to the opposite party, and whether the application is bona fide. It is further held that the Court should adopt a liberal approach if the amendment subserves the cause of justice.

7. On careful consideration of the proposed amendment, it appears that the defendant seeks to incorporate pleadings regarding the nature of the suit property, the effect of tenancy proceedings under Sections 32G and 32M, the jurisdiction of the civil court, and the plea of non-joinder of necessary parties. These aspects go to the root of the matter, particularly in a suit for partition, where determination of title, nature of property, and necessary parties are essential for effective adjudication.

8. Though the delay in filing the present application is considerable and the explanation offered by the defendant is not wholly satisfactory, it cannot be ignored that the proposed amendment is based upon documents obtained from public authorities and seeks to place on record material aspects which may assist the Court in arriving at a just decision. The amendment, in the considered view of this Court, does not

introduce a wholly new or mutually destructive defence, but rather elaborates the existing stand of the defendant.

9. Further, refusal to permit such amendment may result in multiplicity of proceedings, as the defendant may be compelled to agitate the same issues in separate proceedings. On the other hand, the prejudice likely to be caused to the plaintiff can be adequately compensated by granting opportunity to meet the amended pleadings and by imposing appropriate costs.

10. However, this Court is conscious of the fact that the suit is of the year 2009, the trial has already commenced, and the plaintiff is at the stage of cross-examination. The belated amendment would undoubtedly cause delay and inconvenience to the plaintiff and may necessitate further evidence. Therefore, while adopting a liberal approach in the interest of justice, it is necessary to compensate the plaintiff.

11. The imposition of costs, therefore, becomes necessary not only to compensate the plaintiff for the delay and inconvenience caused but also to ensure that parties exercise due diligence in raising their pleadings at the appropriate stage and do not adopt a casual approach. In view of the aforesaid discussion, this Court is inclined to allow the application, subject to payment of costs. Hence, the order.

ORDER

1. The application at Exh. 204 is allowed.

2. The Defendant No. 1 is permitted to amend the written statement (Exh. 34) in terms of paragraph No. 4 of the application.
3. The amended written statement shall be filed within a period of two weeks from today, after serving a copy to the plaintiff.
4. The plaintiff is at liberty to file consequential pleadings, if any, and to recall the witness, if necessary, limited to the extent of the amendment.
5. The application is allowed subject to payment of costs of ₹4000/-, out of which:
 - ₹1500/- shall be deposited with the District Legal Services Authority, Sindhudurg at Oros, and
 - ₹2500/- shall be paid to the plaintiff.
6. The costs shall be paid on or before next date.
7. Order as to costs is condition precedent.

Kankavli
Date: 27/03/2026

(Shubham G. Laturiya)
Civil Judge J.D., Kankavli
JO Code: - MH03297