

Order below Exh. 81

The present application is filed by the plaintiff under Order 6 Rule 17 of Code of Civil Procedure for the amendment of plaint.

2. Read the application. Also read say filed by defendants. Heard Ld.counsel Shri. D.R.Gore for plaintiff. He submitted that, plaintiff's suit is for partition and separate possession alongwith perpetual injunction. The defendants have made construction of house G.P.No. 485 by ousting plaintiff and demolish the original house. The construction is made after instituting of present suit. It is subsequent event. For these reason plaintiff be permitted to amend his plaint. The Ld. counsel Shri.P.V.Bodas for defendants submitted that, the deft. no. 2, 3 and 6 have filed their written statement on 26/06/2014. They have raised specific defence as plaintiff has no concern with the house property. Now plaintiff want to amend his suit so as to deprive the defendants from defence. Plaintiff tried to fill-up lacuna. If the amendment is allowed nature of the suit be changed. Hence application be rejected.

3. Perused record and proceeding. On perusal of plaint it seems that, plaintiff has prayed partition of landed and house properties. The plaintiff has mentioned area of house property (G.P.no. 485 (Old G.P.No. 321)) as 42 feet X 33 feet. At the time of filing of suit plaintiff has claimed joint possession over the suit house property. On perusal of written statement of deft. no. 2, 3 and 6 it seems that, they have denied plaintiff's possession over the suit house property. However, they have specifically contented that, their four father resides in house property and plaintiff's father was resides at another village. Also the defendants have carried out repair construction of house property prior to receiving suit summons of the suit.

4. The plaintiff in his application contented that, he resides in western portion of the house G.P.No. 485 in the area 33 feet X 10 feet and middle portion of the house property of area 22 feet X 33 ft was kept common. On this basis he claimed amendment in para no. 1 to insert his area mentioned above and claimed equitable relief about that area. In the present matter, plaintiff has claimed partition and separate possession of this share and he also claimed perpetual injunction in respect of suit properties. The pleading of the both the parties shows that, G.P. No. 485 was repaired after instituting of the suit it seems that & it is subsequent event. Pleading of the plaintiff itself shows that, he has claimed joint possession over the house property. Now he claimed separate possession of a specific portion. It shows that, amendment sought by the plaintiff is totally contrary to his original pleading.

5. The Ld. counsel of the plaintiff in support of his application and argument placed reliance on following ruling.

(1) **Krishnaji Shankar Moghe Vs. Sitaram Gangadhar Shende,**
2002 (4) Mah L R 641

It has been observed by the Hon'ble High Court that,

“ A party to the Civil Proceedings if desirous of taking advantage of the events which have occurred subsequent to the filing of the proceedings, then the party is not for bidden for doing so, provided that the party has to bring on record those facts by way of amendment of the pleadings and thereafter establish the same by leading necessary evidence in support of such pleadings. But, in the absence of such facts being incorporated in the pleadings, the party cannot derive any benefit from such facts nor any evidence in that regard can be produced on record or looked into.”

(2) **Rajesh Kumar Aggarwal and others Vs. K.K.Modi and another,**
2006 BHCCO 1566

It has been observed by the Hon'ble Apex Court that,

“ Rule 17 of order VI of C.P.C. declares that the Court may, at any stage of the proceedings, allow either party to alter or amend his pleadings in such a manner and no such terms as may be just. It also states that such amendments should be necessary for the purpose of determining the real question in controversy between the parties. The proviso enacts that no application for amendment should be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter for which amendment is sought before the commencement of the trial.”

6. In the present matter in hand already plaintiff has prayed for partition and separate possession of his share in the suit properties. The pleading in para no. 1 of the plaint shows that, plaintiff has specifically mentioned area of the house property. Thereafter he claimed that, original house was demolished and new construction made out by defendants by ousting him. If this circumstance is considered it seems that, plaintiff is dispossessed from the suit property. Now plaintiff want to insert specific area to show that, he was possession over the suit property in specific portion towards the western side. This fact is not mentioned by the plaintiff at earlier stage at the time of filing of suit. His application itself discloses that, he was ousted by the defendants during pendency of suit. In this circumstance it cannot be said that, plaintiff was having possession over the specific portion as mentioned by him. Furthermore considering equitable relief claimed by the plaintiff it seems that, he prayed equity about specific portion. It is settled principle of law that plaintiff cannot go beyond original pleading as he specifically claimed joint possession over the suit properties at the time of institution of suit. If amendment sought by the plaintiff is allow at this stage it will amount to an change in the nature of the suit. Equitable relief can be decided at the final adjudication of suit on the basis of evidence on record. However, the defendants have specifically denied the possession of the plaintiff in their written statement. In this circumstance ratio laid down in

above rulings is not applicable here, though it is settled principal of law that, amendment can be sought at any stage of the matter. Application is devoid of merit & deserves to be rejected. Hence the following order.

- **ORDER** -

- (1) Application is rejected with costs.
- (2) Cost in the final cause.

(**K.K.Mane**)

Date :- 28/10/2014

Civil Judge (J.D.), Deogad.