

R.C.S.No. 88/2010
Maruti Tawade Vs. Vijay Tawade etc.

Order below Exh. 98

The present application is filed by the deft. no. 2 under Order 6 Rule 17 of C.P.C. in order to amend her written statement.

2. Read the application. Also read the say of plaintiff. Heard Ld. counsel Shri.R.V.Raorane for deft.no. 2 and Ld. counsel Shri.D.R.Gore for plaintiff.

3. According to deft. no. 2 suit properties are entered in the name of her grand father and after his demise suit properties was entered into the name of her father. In fact her grand father had four daughters but they are not impleaded as party to the suit. For that reason suit is bad for non joinder of necessary parties. In that regard she want to amend her written statement. Plaintiff objected the said application and submitted that, the reason mentioned in application is not just and proper. Hence application be rejected with costs.

4. On perusal of pleading of both the parties it seems that, plaintiff and defendants are claiming rights over the suit properties. The suit is for partition and separate possession. The deft. no. 2 has produced extract of mutation no. 37 which is about the inquiry of legal heirs of Parashuram Tawade. The said mutation shows that, Parashuram was having son namely Shankar and daughters namely Sunita, Vasanti, Pratibha and Sarika as mentioned in the application. Those daughters are not impleaded as a party to the suit. In the present

matter issues were framed on 31/03/2012. Thereafter suit is pending for hearing. Now the status of the suit is that, suit pending for evidence of plaintiff. But till today plaintiff has not filed his examination in chief affidavit. In that circumstance it cannot be said that, the suit is commenced for hearing. Deft. no. 2 want to bring on record the fact that, suit is bad for non joinder of necessary parties. Considering the nature of suit and documents submitted by defendant no. 2 it is proper to allow deft. no. 2 to amend her written statement. Also it is necessary to note here that, explanation given by the deft. no. 2 for the delay to amend her written statement is not just and proper. For that reason it is necessary to impose cost on her. Hence the following order.

- O R D E R -

- (1) Application is allowed subject to cost of Rs. 400/- out of which Rs. 200/- be paid to plaintiff and and remaining credited to Government.
- (2) Deft. no. 2 to carried out amendment within 14 days and submit the amended copies of written statement as early as possible.
- (3) Cost of the application is in the final cause.

Date :- 09/07/2014.

(**K.K.Mane**)
Civil Judge (J.D.), Deogad.