



Order below Exh. 87 in
Reg. Civil Suit No.177/2014
[Anusaya Aambe & Anr. Vs. Sunita Pawar & ors.]

Defendant nos.4, 5 & 10 filed the present application for having an amendment in their written statement filed at Exh.23. They contend that, they are in possession of the suit property which came to their share by way of oral partition occurred in the year 1970, therefore, the plaintiffs do not have any right in the said portion of the property upon which they are in possession. In pursuance to this, they want to add some factual aspects in para no.10 and 13. Lastly, prayed for allowing the application.

(2). Plaintiffs resisted the said application by filing their say at Exh. 89. They contend that, the defendants, by way of present application, wants to introduce a new concept of oral partition, which actually not happened in past. Moreover, the defendants in their notice reply had clearly mentioned that, they were ready and willing for partition in equal proportion. On this background, now, with some ulterior motive, the defendants are trying to introduce something new which was not pleaded earlier in their written statement. Lastly, they prayed for rejection of application.

(3). Heard learned advocate Shri. N. K. Samlewale for defendant nos.4, 5 & 10. He contended that, there are some factual aspects pertaining to the suit property remained to be mentioned in their written statement at Exh.23 by the earlier advocate due to inadvertence. He further contended that, the present suit is for partition. The defendants had taken a defence that, already partition

has been taken place in the year 1970. To clarify and elaborate the said aspect of partition, the present amendment is necessary. Apart from it, the defendants are not making any addition of new ground in their written statement. Furthermore, the said amendment will only clarify the picture of partition which took place earlier and will not cause any prejudice to the plaintiffs. In support of his contention he relied upon following two rulings.

(i). AIR 1971 Mysore 284, **Lumanna Somanna Malik Vs. Dharmarao Annarao Chougule**, in which it was held that, an application for amendment of pleadings cannot be refused merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure.

(ii). 2024(4) Mh.L.J. 129, **Hasinabi w/o Abdul Latif Vs. Mohammad Sharif and others**, in which it was held that, amendments which are clarificatory in nature, not changing nature of claim or relief and not having any effect or causing prejudice to other side could be liberally allowed.

Lastly, prayed for allowing the application.

(4). Whereas, no one is present on behalf of plaintiffs when called repeatedly.

(5). Perused application, say and record and proceeding. It is not disputed that, the present suit is for partition. The plaintiffs had filed the present suit on the ground that, there was no partition of the suit property till date. On the contrary, the defendants are raising a defence that, an oral partition have been taken place in the year 1970 and, in pursuance to it, they are in possession of the share of the property which came to them. The plaintiffs have not challenged the said oral partition. Therefore, by virtue of limitation the present suit is

barred and even from the date of partition the defendants have become owners by way of adverse possession. In pursuance to it, they filed the present application thereby clarifying as to how they got their rights in the suit property and as to how they came into the possession of it. The said clarification of the defendants cannot be said to be an introduction of a new ground of defence. The amendment sought is in the form of clarification of facts. It will not cause any prejudice to plaintiffs if application is allowed. In view of this, the present application deserves to be allowed. Hence, the following order is passed.

ORDER

- (1). The application at Exh.87 is hereby allowed.
- (2). The defendant nos.4, 5 and 10 are hereby directed to carry out necessary amendment in their written statement filed at Exh.23 on or before next date and to furnish amendment copy of written statement on record.

Sangli.
Date:-19/07/2024.

(M.M.Rao)
Civil Judge Sr.Dn., Sangli.

CERTIFICATE

I affirm that, the contents of this PD.F file are same, word to word as per the original order.

Name of Stenographer : G.S.Parve

Court : Civil Judge Sr.Dn., Sangli

Date : 19/07/2024

Order signed by the Presiding Officer on : 19/07/2024

Order uploaded on : 19/07/2024