

R.C.S.No. 216/2012.

Exh. 31

ORDER BELOW EXH. 31

The defendants have filed this application to grant permission for amendment in written statement as suggested in application.

2. Read the application. Heard the learned counsel following points arise for my determination. I have recorded my findings thereon with reasons thereto which are as follows.

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1.	Whether proposed amendment is necessary to determine real question of controversy involved in the suit ?	'Yes'
2.	Whether the nature or structure of decree will change if amendment is allowed	'No'
3.	Whether the defendants are entitled to seek the permission for amendment as prayed	'Yes'
4.	What order?	'As per final Order'

REASONS

3. The defendants have given the geonology of the family of plaintiff and defendant no.1 to 4. They have also contended that the suit property was joint family property of their joint family. They are intending to add one more plea in their written statement by way of this amendment.

4. The learned counsel explained the reasons stated in application. In support of his submission he placed reliance upon

the legal principle laid down by Hon'ble Apex Court in the case of "Andhara Bank vs. ABN Amro Bank. N.V. And others, reported in 2007, S.C.C.R 63." He also placed his reliance upon the legal principle laid down in the case of "B.P.C.L. Vs Precious Finance Investment Pvt. Ltd. Reported in 2007(1) Mh.L.J.331."

5. I have gone through the amendment suggested by defendant on the background of legal principles laid down in aforesaid cases. The defendants want to add the plea of absence of Necessary Party in their written statement. The plea is based upon earlier averments in written statement. Therefore question to change nature and structure of defence will not arise. On the contrary the amendment is explanatory amendment as submitted by learned counsel for defendant.

6. In the case of "Andhara Bank vs. ABN Amro Bank. N.V. And others, reported in 2007, S.C.C.R 63." Hon'ble Apex Court has held that it is permissible in law to amend a written statement of the defendant by which only an additional ground of defence has been taken. In the case of "B.P.C.L. Vs Precious Finance Investment Pvt. Ltd. Reported in 2007(1) Mh.L.J.331." Hon'ble Shri. D.B.Bhosale, J. has held that, an amendment in plaint and amendment in written statement are not necessarily governed by exactly the same principle. The plaintiff can not be allowed to amend his pleadings so as to alter materially or substituted his cause of action or the nature of his claim. However, adding a new ground of defence or submitting or altering a defence does not arise the same problem as adding altering or substituting a new cause of action. The Courts are required to take more liberal view

in allowing amendment of written statement than of plaint and question of prejudice is less likely to operate with same rigour in former than in later case. If we consider these principles while determination of points arose in this matter definitely the nature or structure of the defence will not change. The amendment is necessary to determine real question of controversy involved in suit. Hence, I answer point no.1 and 2 accordingly. No prejudice will cause to plaintiff if amendment as suggested by defendant is allowed. Hence, I answer point no.3 accordingly and proceed to pass following order.

O R D E R

1. The application is allowed.
2. The defendant is directed to carry out amendment within stipulated period and produce copy of amended written statement.
3. No order as to costs.

Place : Pandharpur.
Date : 25.03.2013.

(Rajendra V.Huddar)
Jt.Civil Judge, Sr.Divn.
Pandharpur.