

ORDER BELOW EXH.74**IN****R.C.S.No. 216 of 2012**

(CNR No.MHSO06-0001682012)

1] This an application for the amendment of pleadings under O-VI, Rule 17 of the Code of Civil Procedure.

2] Perused the application and say vide Exh.77.

3] Heard both the learned advocates.

4] Perused the record.

5] It is submitted on behalf of the defendant No.1, 3 and 4 that additional defence is necessary to be put-forth as a clarification of already filed version in written statement. The facts relating to non-joinder of necessary parties, the previous partition being acted upon, third party interest created by the plaintiff, third party transactions of the plaintiff and the suit property being absolute property of defendants etc. are the facts sought to be put-forth by proposed amendment. It is also submitted that the amendment has become necessary as even during the pendency of suit the plaintiff has carried out transactions relating to Gat 218/3B.

6] The application is challenged as not maintainable. It is submitted that the proposed amendment is regarding different properties. Those are not relating to suit properties. Already trial has commenced. Therefore, in order to delay the suit, the present application is filed.

7] It is settled law that at the time of amendment truth, or falsity in proposed pleadings is not to be tested of like trial. So also, it is

settled law that the amendment of written statement is to be liberally allowed than the plaint. Defendants have also relied upon authorities in this regard. Those are supporting the arguments of learned Advocate for defendants.

- 1) **Baldev Singh and others Vs. Manohar Singh and another (2006(5)Mh.L.J.634)**
- 2) **N.C.Banerjee and Company Vs. Manoj Balkrishna Shah and Others (2011(6)Mh.L.J.55)**

8] In nutshell, it is the case of the plaintiff that by false entry and false application names of defendants are mutated to the suit property. They have created third party interest in favour of defendants No.5 and 6. Hence, the plaintiff has claimed declaration that he is the owner and sale deed of defendants No.5 and 6 is not binding on him. Defendants have filed written statement on count that the plaintiff and defendants No.1 to 4 were members of joint family. There was partition in year 1991 and properties were mutated as per said partition in year 1996. The deed was prepared regarding loan in year 1997. The plaintiff has suppressed all these facts and filed the suit. The suit property was allotted to defendants and they have become absolute owners by virtue of Section 14 of the Hindu Succession Act.

9] Now, in such circumstances considering specific defence, the proposed amendment as to non-joinder of necessary parties, the previous partition being acted upon, the plaintiff sold out some of the properties on his share etc. are all relevant facts and defences. Defendants are not making out any new case. The proposed amendment is necessary to determine the suit on merit. The plaintiff

can carry out consequential amendment. As far as commencement of trial is concerned, even plaintiff has himself applied and his amendment application was allowed vide Exh.67 on 24.02.2021. Hence, when the amendment claimed by the plaintiff has been recently allowed, the amendment of defendants so as to explain their defence further and so as to decide the matter on merit, should be allowed. The delay can be compensated in terms of costs. Hence, following order is passed.

ORDER

- 1] The application is allowed subject to costs of Rs.1,000/- to the plaintiff.
- 2] Defendants shall carry out the amendment, till next date and shall file amended copies.

Pandharpur
Date:-13.07.2022

Civil Judge Senior Division,
Pandharpur

CERTIFICATE

I affirm that, the contents of the this P.D.F file Order/Judgment are same word to word, as per the original order/ judgment

Name of Stenographer : B.R.Kondekar
Court Name : Civil Court Senior Division, Pandharpur
Date 13-07-2022

Order/Judgment signed
by the Presiding Officer on : 13-07-2022

Order uploaded on : 13-07-2022