

Order passed below Ex.58 in R.C.S. No.215/1998

(CNR NO. MH007-000169-1998)

I.A.No.01/2020

01] This is an application filed by the plaintiffs for grant of permission to amend the plaint under Order 6 Rule 17 of C.P.C.. It is submitted therein that plaintiffs temporary injunction application was allowed. That thereafter issues are recasted 08.06.2015. That after obtaining 7/12 and 6D extracts relating to the suit property the fact of ancestral house properties of plaintiffs and defendants came to the knowledge of plaintiffs. That the defendants have sold the suit property of field Gat no.161 to a third person by executing sale deed in their favour by taking advantage of their names in 7/12 extract. Since the abovesaid fact come to the knowledge of plaintiffs recently it is necessary to bring all those facts on record by making amendment in the plaint.

02] That the plaintiffs want to add house properties bearing no.168, 399 and 400 in plaint para 1A after plaint para 1 and by adding field Gat no.161 by adding plaint para 1B after adding plaint para 1A. That the plaintiffs want to add certain facts relating abovesaid property in plaint para 3A, 4A, 4B and 5A after plaint para 3, 4 and 5 respectively. That by making amendment the plaintiffs want to add the subsequent purchaser of the suit property as well as the above said field in the array of defendants of the instant suit.

03] It is further submitted therein that the abovesaid amendment is necessary to decide the suit on merits. That it does not change the nature of the suit. That no prejudice will be caused to the defendants if the proposed amendment is allowed. Therefore, the instant application needs to be

allowed.

04] After issuance of notice to the proposed defendants and after giving sufficient opportunity to the present defendants as they failed to file their reply to the instant application the instant application came to be proceeded further without their reply as per the order passed thereon.

05] In reply filed by defendant no.1 at exh.68 he has strongly opposed the instant application and denied the contents thereof. He has further submitted therein that the plaintiff no.1 has sold the said field Gat no.161 in the year 1980. That at that time plaintiff no.2 to 4 were not born. That the legal heirs of purchaser Bhaskar Govind Gaikwad cannot be made defendant in this suit. That the proposed amendment in respect of field Gat no.161 is out of limitation. That since some area out of suit property has been acquired by Government of Maharashtra for the purpose of canal and the work of excavation of the said canal has been executed the proposed defendant no.6 is not required to be made as defendant. That the description of the house property and the area of the house property no.168 is incorrect. That since the instant application is not signed by all the plaintiffs the instant application is liable to be rejected.

06] Perused the instant application at exh.58 and reply filed by the defendant no.1 at Exh.68. Heard learned advocates for both the parties at length.

07] Considering above contentions, following points arise for determination and findings are recorded thereon for reasons to follow.

<u>Sr.No.</u>	<u>Points</u>	<u>Findings</u>
1.	Whether the proposed amendment is necessary to decide the real question in controversy between the parties to the suit ?	<u>Yes, as per final order.</u>
2.	What order ?	<u>As per final order.</u>

REASONS

As to point Nos. 1 :-

08] By making amendment in the plaint the plaintiffs want to add certain house properties and the said field Gat no.161 in the suit property of the instant suit claiming those to be the ancestral property of plaintiffs and defendants. They also wants to add the subsequent purchaser of the said house properties and the said field. Adding all the said house properties and the field gat number is necessary to bring all the properties in hotch pot since it is suit for partition. The plaintiffs also wants to add subsequent purchaser of the said house property and the said fields in the array of defendants of the instant suit. Since the plaintiffs have not made any submission as to how much area has been acquired for the purpose of said Ujani canal and since an effective decree can be passed excluding the area acquired for the same Ujani canal there is no any need to add Executive Engineer, Ujani Canal, Mangalwedha as a defendant in the instant suit.

09] The proposed amendment as sought in the instant application by the plaintiffs does not change the nature of the suit. No prejudice will be caused to the defendants if the proposed amendment is carried out in the plaint as sought by the plaintiffs. On the contrary, the proposed amendment needs to be made in the instant suit to decide the real question in

controversy between the parties to the suit. So far as delay is concerned it cannot be a ground to refuse the amendment as it is very necessary to decide the real question in controversy between the parties to the suit, as the same may be compensated by imposing the cost over the plaintiffs. For all these reasons the instant amendment application needs to be partly allowed as per final order. As such, point no.1 is answered in affirmative.

As to point Nos. 2 :-

10] In view of finding given to the point no.1 it is clear that the proposed amendment deserves to be partly allowed as per final order. As such, in answer to point no.2 final order is passed as follows:-

ORDER

1. The plaintiffs are permitted to carry out the proposed amendment in the plaint as sought except adding Executive Engineer, Ujani Canal, Mangalwedha in the array of defendants subject to cost of Rs.500/- (Rs. Five Hundred only) to be paid to the defendant no.1 and to file the amended plaint on record on or before next date.
2. The application is disposed of accordingly.

Date: 09.01.2020.

(P.P. Deshmukh)
Jt. Civil Judge, J.D.,
Pandharpur.

CERTIFICATE

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

Name of Stenographer : A.K. Vibhute

*Court : Jt.Civil Judge Junior Division
Pandharpur*

Date : 09.01.2020.

*Order signed by the
Presiding Officer on : 09.01.2020.*

Order uploaded on : 13.01.2020.