

Order below Exh.36 in RCS No. 298/2019

This application is filed by the plaintiff for amendment of the plaint. Defendant filed say and resisted the application.

2. Heard advocate Shri Bagal for plaintiff and Shri Kachare for the defendant. Perused application, say, plaint.

3. It is submitted by advocate Shri Bagal that after filing of the suit it is brought to the notice of the advocate that the property of village Malewadi Tal. Malshiras is not added in the plaint as suit property. The property of Malewadi is also the Joint Hindu Family property. The suit is for partition. Therefore, all the properties are required to be brought in common hotch potch for complete division of the adjudication. Therefore, he prayed to add the property in the plaint by adding para No.4A. He further prayed that after addition of the property, the valuation of the suit changes, therefore, the amendment as regards the valuation of the suit is required to be allowed and therefore he prayed to allow the application. He further submitted that there will be no prejudice to the defendants if application is allowed, on the contrary, the claim of the plaintiff will be prejudice if, amendment is rejected. Hence, he prayed to allow the application.

4. Advocate Shri Kachare for the defendants submitted that the application of the plaintiff is false. There is no necessity to add the property of Malewadi. The source of the purchase of the property by the defendant is nowhere mentioned in the application.

By this amendment plaintiff has not added any prayer in the prayer clause. If , there will be no prayer, then there is no need to amend the plaint. The previous application filed by the plaintiff below Exh.33 is pending. Therefore, the application is not tenable. Hence he prayed to rejection of the application.

5. I have gone through the record of the case. During the argument advocate Shri Bagal for the plaintiff submitted that he is going to not press the application below Exh.33. Accordingly, he has mentioned on Exh.33 that, he is not going to proceed with the application Exh.33 on technical grounds. Accordingly, I passed the order on Exh.33 and filed the application, as it is not pressed.

6. I have gone through the plaint. It seems that the suit is for partition. For deciding the dispute between parties in partition suit all the properties of joint family are required to be brought on record by the plaintiff. It is the case of the plaintiff by this application that, the property mentioned in the application of village Malewadi Tal. Malshiras is joint Hindu Family property. In such circumstances, the amendment considering the averments in the application is required to be allowed. If, it is rejected, the plaintiff will be prejudiced. But, if it is allowed there will be no prejudice to the defendant. On the contrary, mere allowing the amendment does not declare the property of Malewadi as Joint Hindu Family property. For that reason both parties have to adduce their evidence on that issue. The further amendment prayed by the plaintiff are of technical in nature as they are subsidiary as regards the property. Hence, there

are satisfactory grounds shown by the plaintiff for allowing the application.

7. The present suit is filed in year 2019. This application is filed on 20.10.2023. Plaintiff filed this application with delay of 5 years. The delay is nowhere mentioned in the application. No doubt, the present suit is not fixed for evidence. But, the plaintiff caused 5 years delay for filing this application. Therefore, the delay is required to be compensated in terms of costs i.e. of Rs.2000/- to be paid to the defendant. Hence, I pass the following order.

-: ORDER :-

1. Application Exh.37 is allowed subject to payment of costs of Rs.2000/- to the defendant.
2. Plaintiff is allowed to amend the suit as prayed in the application Exh.37 and filed amended copy on or before next date, after payment of costs

Date : 02.01.2024
Pandharpur.

(M.R.Kamat)
Jt. C.J.J.D. Pandharpur.

Certificate

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| (a) | Name of the Stenographer | : Rajiv M. Gogi |
| (b) | Court. | : Jt. C.J.J.D., Pandharpur |
| (c) | Date of order | : 02.01.2024 |