

ORDER BELOW EXHIBIT NO. 31
(PASSED ON 18th JULY , 2018)

1. This is an application filed by the plaintiff for amendment of plaint under Order 6, Rule 17 of the Code of Civil Procedure, 1908 (hereinafter referred as 'Code').

2. It is contended that plaintiff have filed the present suit for partition and separate possession. Meanwhile defendant No. 1 had executed a sale deed dated 11-03-2014 in favour of Sitaram Dhondiram Yedge. Now, the plaintiff is intended to add said Sitaram Dhondiram Yedge as defendant No. 10 and also intended to insert para No. 6A in the plaint.

3. Defendants have not resisted the application by filing their say. This application is filed on 10-10-2014. Till today defendant Nos. 1 to 9 have not filed their say. My learned predecessor had issued show cause notice to the proposed defendant Sitaram Dhondiram Yedge, he also failed to appear and file his say. Therefore, this application is taken for its decision without the say of defendants.

4. Heard learned advocate appearing for the plaintiff. The defendant and learned advocate for defendants is remained absent. On perusal of record following points

2 R.C.S.NO.236/14(EXH.31)

arise for the determination. Findings thereon are recorded with reasons stated thereunder.

<u>SR.NO.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether the proposed amendment is essential for determination of real question in controversy ?	Yes
2.	What order ?	As per final order.

REASONS

5. Order 6, Rule 17 of the Code reads as under.

“Amendment of pleadings :- The court may at any stage of the proceeding allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining their real questions in controversy between the parties.;

6. Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of trial.”

7. The proviso inserted by the Code of Civil Procedure, (Amendment Act) 2002 for Rule 17 of Order 6 of the Code is came into effect on 01-07-2002. The proviso has been

3 R.C.S.NO.236/14(EXH.31)

incorporated to ensure that application for amendment should not be entertained after commencement of the trial unless the Court comes to the conclusion that inspite of due diligence the party could not have raised the matter before the commencement of trial. The proviso does not take away the discretion of the Court to allow the amendment which is found in the main rule. However, imposes duty on the court to examine whether the party could not have applied for amendment earlier in spite of due diligence.

8. This is a suit for partition and separate possession which was instituted on 15-04-2014. Defendant Nos. 2, 3, 6 to 8 were served with the summons of this suit on 04-04-2015 but failed to appear. Therefore, matter is proceeded ex-parte against them. Yet remaining defendants have not filed their written statement. In such a circumstances, it cannot be said that the party could not have applied for amendment earlier in spite of due diligence.

9. It is well settled law that leave to amend will be granted if the proposed amendment is necessary for the decision of real controversy between the parties and will not work injustice on the other side. Leave to amend will be refused, if the proposed amendment is not necessary for the decision of suit on merit or if it will work injustice on the other side and if it will take away any right accrued in

4 R.C.S.NO.236/14(EXH.31)

favour of the other side. Proposed amendment can be refused if it is malafidely sought. It can be refused if it changes the nature of the suit or defence.

10. In regards to this application plaintiff submitted that this amendment is an outcome of subsequent act committed by the defendant No. 1. Thus, this amendment will not change the nature of the suit. For the purpose of avoiding multiplicity of the proceeding the proposed amendment is explanatory in nature. If the proposed amendment is allowed the nature of suit or defence will not change.

11. After perusal of proposed amendment in the light of pleadings of the plaintiff, it appears that the proposed amendment is not inconsistent with the contents of plaint. Thus, it is clear that the proposed amendment is neither inconsistent nor contrary to the nature of suit.

12. It is well settled law that proposed amendment can not be denied only on the ground of delay if it is necessary to decide the real controversy between the parties. It is to be noted that no right accrued to the defendant is taken away. It is not necessary to consider the merit of proposed amendment, defendant can challenge it. It is for the plaintiff to prove the contents of proposed amendment

during the trial.

13. Considering the delay & nature of proposed amendment while allowing this application cost of Rs. 200/- (in words rupees two hundred only) will have to be imposed on the plaintiff. This order will meet the ends of justice. Hence, point No.1 is answered in the 'affirmative' and in answer to point No.2 following order is passed.

ORDER

- 1) Application Exhibit No. 31 is allowed subject to cost of Rs. 200/- (in words rupees two hundred only)
- 2) Plaintiff do pay the cost of Rs. 200/- (in words rupees two hundred only) to the defendants or deposit it in to court and carry out the proposed amendment within 14 days from today.
- 3) Plaintiff do supply amended plaint with copy thereof and take necessary steps in respect of suit summons to the newly added defendant No. 10.

Sd-

18th July, 2018.

(D. U. Rajput)
4th Jt. Civil Judge, Junior Division,
Pandharpur.

6 R.C.S.NO.236/14(EXH.31)

CERTIFICATE

I affirm that the contents of this PDF file Order is same word to word as per the original Order.

- a) Name of the Stenographer :Sadafule M. P. Steno(LG)
- b) Court :4th Jt. C.J.J.D., Pandharpur.
- c) Order signed by P.O. on :18th July, 2018.
- d) Order uploaded on :18th July, 2018.