

ORDER BELOW EXH. 75 IN R. C. S. NO. 53/2013

1] Heard both the counsel and perused the application and say of defendants.

2] This application is filed on behalf of plaintiffs for the purpose of seeking amendment in prayer clause of plaint. Plaintiffs through this application submitted that, plaintiffs are exclusive legal heirs of their deceased father named as Pandurang Durape and as per the partition of the ancestral lands of the family of plaintiffs and defendant No. 5 to 18. The suit property of this suit i.e. gat No. 536 allotted to the share of deceased father of plaintiffs. Defendant No. 5 to 18 are not having any concern with the suit property and they are not legal heirs of deceased father of plaintiffs named as Pandurang Durape. Defendant No. 2, without considering the above mentioned fact, passed the order of partition of the land of gat No. 536 between plaintiffs and defendant No. 5 to 18.

3] Thus, in view of above mentioned averments, plaintiffs prays that, in the prayer clause, it is required and necessary to add the prayer as “plaintiffs are exclusive legal heirs of deceased Pandurang Genu @ Genba Durape”. Due to proposed amendment, the nature of this proceeding will not be changed and no any new cause of action will be arising. Hence, prays that, application may be allowed.

4] On the other hand, defendant No. 12 to 18, in view of say vide Exh. 80, objected this application on various grounds and submitted that, this application is filed only with intention to prolong the hearing of

Exh. 5. Plaintiffs in their plaint, not seeking amendment but seeking amendment in prayer clause which is not maintainable. Due to proposed amendment, the nature of this proceeding will be changed. Thus, in short submitted that, the application may be rejected.

5] Then other defendants, in view of say vide Exh. 81, objected this application on various grounds and submitted that, as per the provision of order VI, Rule 17 of Civil Procedure Code, this amendment application is not maintainable. This application is filed only with intention to prolong the hearing of Exh. 5 of this proceeding. This application is filed by developing after thought theory, in view of the objections of say and WS of defendants and in view of application of defendants dated 17.01.2014 which filed for framing preliminary issues. Means this application is filed only for the fill up the lacuna of pleading. As regards the grievance of plaintiffs, this Court is not proper forum as per provision of section 33 and 41 of Maharashtra Agricultural (Ceiling on Holdings) Act, 1961. Because as per section 33, if plaintiffs are having any grievance against the decision of defendant No. 2. Then they are having remedy to challenge it by way of appeal as per section 33 of Maharashtra Agricultural Land (Ceiling on Holdings) Act and as per section 41 only Maharashtra Revenue Tribunal is entitle to entertain such type of grievances.

6] Hence, submitted that, this application is not maintainable. Due to proposed amendment, plaintiffs put up before the Court new theory. Means due to proposed amendment, the nature of this proceeding will be changing. Thus, in view of above mentioned averments and other

averments which mentioned in say by objecting this application prays that, application may be rejected with cost.

7] Thus, considering the application and say of defendants and perusing the pleading of plaintiff and WS, it appears that, in view of the pleading of plaintiff in para No. 3, plaintiffs submitted that, in view of partition of the ancestral properties of plaintiffs and defendant No. 5 to 18, the land of gat No. 536 is allotted to the share of their deceased father named as Pandurang. Hence, in view of that partition and in view of exclusive legal heirs of deceased Pandurang, only plaintiffs are entitled for claiming the suit property. Whether this pleading of plaintiffs is justified one, is a question of conclusion of final hearing, can be concluding only after recording oral and documentary evidence of both the parties. OR whether this partition is legal or illegal is also question of final hearing, can be concluding after recording oral and documentary evidence of both the parties. Hence, firstly I held that, this application is maintainable.

Then secondly, burden of proving the contention of proposed amendment is on plaintiffs and defendants are at liberty to file their additional say, in view of proposed amendment. If the plaintiffs succeeded to prove the proposed amendment, then and then only the contention of amendment is having value, otherwise that amendment is remained as pleading. Hence, again I held that, if at this stage, permission is granted to plaintiffs for carrying out the amendment, then other side is not suffering any loss.

Then thirdly, in view of observation of various cited ruling of Hon'ble Supreme Court and Hon'ble High Court, observed that, as

regards amendment liberal view may be taken. Means, amendment which is not changing the nature of proceeding and not arising any new cause of action, as regards that amendment liberal view may be taken.

8] Minutely perusing the proposed amendment application of plaintiffs, it appears that, in view of this application, plaintiffs seeking whatever proposed amendment, due to that amendment, the nature of this proceeding will not be changed and not arising any new cause of action. Again, I Held that, this application is maintainable.

9] Again according to my opinion, the counsel on behalf of defendants, in view of his say raised whatever objections and by way of argument points raised whatever objections, according to my opinion in that objections having substance or not is a question of final hearing, can be concluding only after recording oral and documentary evidence of both the parties. Hence, I am unable to rely with the argument points of the counsel on behalf of defendants. But prior to allow this application, it is required and necessary to see whether there is delay to plaintiffs for filing this application or not. Perusing the plaint, it appears that, this suit is filed on 29.10.2013 and the application of proposed amendment is filed on 18.08.2014. Means for filing of this application showing delay of near about 8 to 9 months. Minutely perusing the application, it appears that, the proposed amendment not arising due to any subsequent event. Hence, I held that, this application is filed by plaintiffs at belated stage. Hence, if I came to conclusion to allow it, then it is required and necessary to allow it with subject to availing some cost. Thus, in result of above reasoning, I proceeded to pass the following order.

ORDER

- 1] The application vide Exh. 75 is hereby allowed with subject to cost of Rs. 1,500/-.
- 2] Plaintiffs are directed to pay or deposit the amount of cost within 14 days and carry out the proposed amendment within stipulated time provided by order VI rule 17 of Civil Procedure Code and file copy of amended plaint within reasonable time.
- 3] Defendants are at liberty to file their additional say.
- 4] No order as to any other cost.

Date : 05.12.2014.

Place : Malshiras

(S. G. Thube)
Civil Judge Senior Division,
Malshiras