

ORDER BELOW EXH.101 IN R.C.S. No.202 / 1999

The present application is filed by the plaintiff under Order 6 Rule 17 of the Code of Civil Procedure to amend the plaint.

2. In short, it is the contention of the plaintiff that, at the time of filing the suit, *potkharab* area of the suit property is remained to be mentioned in the description of the suit property. Therefore, it is necessary to amend the plaint and to insert *potkharab* in the description of the suit property. Due to said amendment nature of suit will not change, it will decide real controversy between the parties. Hence, prayed to allow the application.

3. The defendant No.6 filed say at Exh.104 and opposed the application. It is the contention that, the plaintiff has closed his evidence and the defendant has lead his evidence by filing affidavit. Therefore, at this stage, the application is not tenable. The plaintiff is trying to fill-up the lacuna inspite of the objection raised by the defendant in written statement. The plaintiff has sought amendment after 16 years. The previous application filed at Exh.89 is already rejected and same order is upheld by the Hon'ble High Court. Only to prolong the matter, the present application is filed. Hence, prayed to reject the same.

4. Heard both the parties. Perused their pleadings. The present suit is filed for partition and separate possession. In present matter, the plaintiff has already closed his evidence and the defendants has filed his affidavit of examination-in-chief. When the matter is fixed for cross-examination of the defendant, the present application is filed. It means, the present application is filed after laps of 16 years. Though, there is delay of 16 years. But, it is necessary to mention that, the present suit is of 1999. Therefore, the amended provision of Code of Civil Procedure which are incorporated in the year 2002 are not applicable in present matter. Therefore, the question of delay and commencing of trial will not come in way to decide the present application.

5. Now, it is necessary to see whether the proposed amendment is

necessary to resolve the dispute between the parties. As the suit is for partition and separate possession and unless there is specific description of the suit property, the right of the parties cannot be determined in absence of description of the property. Therefore, to resolve the dispute and the controversy between parties. The proposed amendment is necessary.

6. So far as contention regarding rejection of application Exh.89 is concern, it appears that the said application is in respect of granting the permission to the plaintiff to lead additional evidence in view of amendment in the plaint. The said application is not in respect of amendment. The amendment was sought by the plaintiff by filing application Exh.91. The said application is rejected. By way of that application, the plaintiff sought the amendment to insert the proposed defendant No.7 to 9 and contention regarding the same. Therefore, that application was total in different form than, the present application. Therefore, that order will not come in way to decide the present application.

7. As the proposed amendment is necessary to decide the controversy between the parties, the application deserves to be allowed. Considering delay to file present application, it is necessary to impose heavy costs upon the plaintiff. Hence, I pass following order.

Order

- 1 Application is allowed subject to costs of Rs.5000/-.
- 2 The plaintiffs shall amend the plaint on depositing the costs amount within limitation and submit copy of amended plaint for the Court and defendants.
- 3 Defendants are at liberty to submit additional WS on amended portion only.
4. Concerned clerk is directed to take note of amendment in the suit register immediately.

Date : 23.02.2016.

(R. P. Kulkarni)
Jt. Civil Judge Junior Division, Malshiras.

Certificate

Case No.	:	R.C.S.No.202/1999
I affirm that, the contents of this PDF file – order is same word to word as per original order.		
Name of Steno	:	Shri. S. A. B. Shaikh
Name of Court	:	Civil Judge Jr. Dn. Malshiras
Date of order	:	23/02/16
Date of order signed by P.O.	:	26/02/16
Date of order uploaded	:	26/02/16