

ORDER BELOW EXH. 39

Defendant no. 4 to 6 has filed present application under Order-VI Rule-17 of the Civil Procedure Code for amendment in the written statement. It is his contention that, he has filed written statement below Exh. 37 in the present case. In that written statement para no.4 page no.6 after the word of 'वाटप अंतिम झाले' statements relating to survey no 48 are required to be added. Therefore, he prayed to allow the amendment.

2] Plaintiff has filed his say at Exh. 49 and strongly opposed the application. Advocate for the plaintiff submitted that, if this amendment is allowed then, the pleading of defendant will be in consistent pleading which can not be allowed. Defendants filed their say on Exh 05 in which they have not pleaded the things which they want to add by this amendment. The application filed by the defendant is not tenable. The proposed amendment will change the nature of written statement and also caused prejudice to the plaintiffs. Therefore, plaintiffs prayed to reject the application.

3] Considering the rival contentions of the both the side. So also I have gone through Order-VI Rule-17 of Civil Procedure Code its provides that, the court may at any stage of the proceedings allow either party to alter or amend his pleadings in such a manner and on such term as may be just and all such amendments shall be made as may be necessary for the purpose of determining real questions in controversy between the parties. Hon'ble Supreme Court case law **I] Raj Kumar Bhatia Vs. Subhash Chander Bhatia in Civil Appeal No. 19400 of 2017** in which Hon'ble Supreme Court has observed

that, while accepting that, in the course of considering an application for amendment, its merits or demerits should not be evaluated, the High Court nevertheless held that, the amendment in the present case was untenable on merit. Whether an amendment should be allowed is not dependent on whether the case which is proposed to be set up will eventually succeed at the trial.

4] Considering the above view taken by the Hon'ble Apex Court in above case law and facts of the present case in hand, after going through pleadings in the written statement, it appears that, the defendant has pleaded the fact that, plaintiff filed false suit against the defendants and same is liable to be dismissed. Present suit is filed for partition and possession. Therefore, to determine the controversy between the parties, opportunity is required to be given to the defendant. The proposed amendment appears to be bonafide and it will not change the nature of suit. So also it will not cause any prejudice to the plaintiffs. Therefore, to decide the real controversy between the parties and by following principle of natural justice, I proceed to pass following order.

O R D E R

- 1] Application is allowed subject to costs of Rs. 500/- be payed to other side.
- 2] Defendant no. 4 to 6 are permitted to amend their written statement within 14 days.
- 3] No order as to costs.

Date: 20/06/2023

(Mahesh N. Patil)
4th Jt. Civil Judge Jr. Dn.
Malshiras

CERTIFICATE

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

Name of the Court : 4th Jt. C.J.J.D & J.M.F.C., Malshiras.

Name of Stenographer : Praveen Nagnath Nalla (Grade III)

Order signed by the
Presiding Officer on : 20 / 06 / 2023.

Order uploaded on : 20 / 06 / 2023.