

ORDER BELOW EXH.56 IN R.C.S.NO. 577 of 2007
(PASSED ON 23rd DAY OF JUNE- 2015)

<i>Ganesh Kisan Sankpal</i>	:::	<i>Plaintiff</i>
<i>Vs.</i>		
<i>Sou. Mangal D Jadhav etc.</i>	:::	<i>Defendants</i>

This is an application filed by the defendant No.01 & 02 vide Order VI Rule 17 of the Code of Civil Procedure, seeking amendment in written statement, thereby sought to raise additional pleadings in respect of death of Vishvnath Bhiva Sankpal and the mutation entry taken place on his behalf during his life time as mentioned in para 4 of the application. In short, facts given rise to the present application are as following:

02] Present suit has been filed for declaration that the sale deed executed by defendant No.02 in favour of defendant No.01 is *ab-intio* void and thus not binding upon plaintiff and defendant No.03 to 05 and sought consequential relief of injunction. The plaintiff has raised pleadings that defendant No.1 and 2 had fabricated false mutation entries and got mutated the name of defendant No.2 to the suit land despite death of Vishvnath Sankpal. Claiming in possession of suit land plaintiff has sought injunction as indicated above. Defendant No.01 and 02 have filed written statement alongwith counter claim against plaintiff, defendant No.03 to 5 and other additional defendants No. 6 to 13 as mentioned in the counter-claim and denied suit claim in toto. The main contention of the defendants is that the mutation entries were taken during life time of Vishvnath Sankpal. The suit land was the self acquired property and was validly transferred to defendant No.2 and accordingly she transferred the suit land to defendant No.1 for legal necessity. Thus, she sought to dismiss the suit with prayer to allow counter claim for partition and other consequential relief. Defendant No.03 to 05 have accepted the suit claim filing their written statement at Exh.31.

03] Issues have been framed at Exh.43 and matter is pending for hearing. Yet evidence i.e. hearing of the suit is to be commenced.

04] It is contention of the defendants that they have already raised pleadings as to the validity of the mutation entries and consequential sale deeds. Now it is contention of the defendant that they have taken search of the documents and they found some important documents from the revenue record. Thus, they want to raise additional pleadings to explain the facts as to the mutation entries taken place during life time of deceased Vishvnath Sankpal.

05] The plaintiff failed to file say to the application. However, made arguments to reject the application.

06] Having heard both sides at length and having gone through the respective pleadings, nature of the suit claim and the counter-claim the facts as to the date of the death of deceased Vishvnath Sankpal and mutation entry taken place in the name of defendant No.2 is material pleading for the suit. Thus, pleadings should be made properly and required to lead appropriate evidence to decide rights of the parties. Unless proof of these facts, the relief of declaration cannot be granted. In these circumstances, the defendants have to raise the appropriate defence to prove their pleadings. Thus, amendment sought by the defendant to elaborate and to make additional pleadings appears to be essential for the just decision of the case. Raising such pleadings would not change nature of the suit and would not cause any prejudice to plaintiff. In view of the stage of the proceedings, amendment in written statement can be allowed liberally. In these circumstances there finds no sufficient cause to reject the application. Thus, the application have to be allowed subject reasonable costs for delay in moving application after framing issues. Hence, I pass following order.

ORDER

01. Application is allowed subject to costs of Rs.300/- to be paid to the plaintiff.
02. The defendant should carry out amendment within 14 days,

and supply the copies of the written statement, failing to which the order stands vacated without further reference of the Court.

Date: 23rd June- 2015.

(**Sudhir N. Shinde**)
Jt.Civil Judge, Junior Division,
Barshi.