



R.C.S. NO.95/2015
MHSO180007652015

ORDER BELOW EXH.79

The plaintiff has filed the present application under O. 6, R. 17 of the Code of Civil Procedure, for amendment in his plaint. Called say of defendants. Heard learned advocates of both sides at length.

[2] Perused the application. It is contended by the plaintiff that, the present suit is filed for partition and separate possession. At the time of filing of the present suit, one property bearing Block no.682 situated at village Andhalgaon, Tal.Mangalwedha is not shown as the suit property, as defendant nos.4 and 5 were shown willingness to share said property. The said property is his joint family property and he has 1/6th share therein. Therefore, it is necessary to add block no.682 & consequential reliefs in respect of the said property. Accordingly, the plaintiff prayed for carrying out the amendment.

[3] Defendant nos.1 to 5 have filed their say contending that, the present application is filed for prolonging the matter and the Block no.682 is not ancestral or Hindu Joint Family property. Accordingly, they prayed for rejecting the application. Defendant nos.6 and 7 have filed their say and given no objection for allowing the application. Defendant no.8 failed to file his say till date.

[4] The suit is at the stage of evidence of the plaintiff. Evidence affidavit has been adduced on record on 26/06/2019. It is revealed that, suit is filed in the year 2015 i.e. present suit is near about 7 years old. It is also revealed that, plaintiff is having knowledge about the said property since institution of the present suit. But, he has filed the present application at such belated stage. It is also revealed from perusal of 7/12 extract of the proposed

suit property that, names of defendant nos.4 and 5 are written as cultivator of said property. At this stage, it is not necessary to look into the merits of the case, while considering the application for amendment. It is well-settled that, the rules of procedure are intended to be a hand made to the administration of justice. A party cannot be refused just relief because of some mistake, negligence, inadvertence, delay on his part. If the proposed amendment is allowed, then it will not change the nature of suit.

[5] By the proposed amendment, no new case is made out. In the light of above discussion and after taking into account the facts and circumstances of the case, the proposed amendment is necessary for determination of real controversy in between the parties on merits and it will not cause injustice, prejudice to the other side. Therefore, in my view, to direct the plaintiff to amend the plaint, will help to avoid multiplicity of proceeding and it will help to decide the real controversy between the parties. As far as, question of huge delay is concerned, it can be compensated by awarding cost to defendants. Resultantly, I proceed to pass following order :

ORDER

- 1] The application is hereby allowed, subject to cost of Rs.5,000/- (Rs. Five Thousand Only). Cost be given to defendants.
- 2] Plaintiff is hereby directed to carry out amendment within 14 days of this order.
- 3] Plaintiff is hereby directed to submit copy of consolidated plaint.
- 4] Both parties to take note of this order and expedite the proceeding of the suit.

Date : 03/10/2022

(Smt. S.N. Gangwal-Shah)
Civil Judge Jr. Dn., Mangalwedha

CERTIFICATE

I affirm that the contents of this P.D.F. file Order are same word to word as per the original Order.

(a) Name of the Stenographer : A.P.Hipparagi,

(b) Name of the Court : C.J.J.D., Mangalwedha, Dist. Solapur,

(c) Order signed by P.O. on : 03/10/2022

(d) Order uploaded on : 03/10/2022