

**Order below Exh.49 in R.C.S. No. 62/2021.**

The plaintiff has sought amendment in pleadings *vide* order VI Rule 17 of the Code of Civil Procedure, 1908. ('**CPC**' for short). The application is strongly resisted by the defendant *vide* his say on various grounds ultimately prayed that the application may be rejected. The application is supported with affidavit of plaintiff (Exh.50). Perused application, affidavit, say. Heard Advocate Shri. P.B. Gajare for the plaintiff and Advocate Shri. P.S.Kumbhar for the defendant.

2. The amendment is sought on the ground of contentions made by defendant in his written statement. It is claimed that on the basis of contentions made in written statement by defendant. As per plaintiff property situated at village Morwanchi Tal. Mohol, Dist. Solapur bearing Gat No. 267/17/A/1 is in the name of faher of plaintiff i.e. Uttereshwar Ambadas Kumbhar. After framig of additional issues by court, to avoid technical error it is necessary to make amendment in respect of said property. Therefore said property needs to be included in suit. It further claimed that in view of such changed circumstances, the plaintiff also want to make specific pleadings in that regard and therefore according to him, proposed amendment and pleadings have become necessary. *Per contra* the application is strongly resisted on the ground that the application is filed to wash out admissions brought by defendant in cross examination. Present application is filed by plaintiff to fill up the lacuna. Therefore, application deserves to be rejected.

3. From perusal of record, it appears that in this suit issues were framed on 3/02/2023 and additional issues were also framed on 21/07/2023. After that evidence of plaintiff is also commenced.

Cross examination of plaintiff by defendant is completed. At such stage present application was moved.

4. In view of proviso to Order VI Rule 17 of C.P.C, amendment in pleadings cannot be allowed after the trial has commenced unless the plaintiff satisfies the Court that he could not have raised the matter *despite due diligence* before commencement of trial. Proposed amendments appear more to be explanatory. It is further submitted that no prejudice will cause to defendants. Suit is for partition. In such circumstances, it is obvious that the plaintiff could not have raised the matter *despite due diligence* before framing of issues in this case.

5. Even otherwise, opportunity of pleading is desirable to be given to the plaintiff for the decision on real controversy between the parties at once on merits. The same is further essential to avoid multiplicity of the proceedings. Moreover, defendants would also get opportunity to answer the proposed amendments by giving additional WS. Thus, no prejudice would be caused to defendant if the application is allowed. Thus, the application deserves to be allowed. Hence, the order:-

### **ORDER**

1. Application (Exh.49) is allowed.
2. The plaintiff is directed to carry out the amendments in the plaint and shall file copy of amended plaint on or before next date.
3. Cost in main cause.

(P.S.Govekar)

Date : 02/02/2024.

2<sup>nd</sup> Jt. C.J.J.D., Mohol.