

Order Below Exh.72 in R.C.S. No.157/2014.
(Passed on 19.11.2019.)

01. Heard Mr.PS.Kumbhar, Learned Advocate for the plaintiff and Mr.K.M.Naik, learned advocate for the defendants.

02. This is an application filed by plaintiff and sought amendment in plaint. The plaintiff has stated that she has filed present suit for Partition. The plaintiff has further stated that the defendant No.04 namely Anurath Machindra Ohol is died on 09.04.2019. The plaintiff has further stated that the name of defendant No.04 needs to be deleted and LRs. of the defendant No.04 needs to be brought on record. The plaintiff has further stated that, there is proposed amendment in genealogy of the parties. The defendant No.04 has executed sale deeds in favour of the defendant Nos.07 and 08. Therefore, the plaintiff want to amend the plaint. This fact is happened during the pendency of the suit. Therefore, the plaintiff has constrained to file present application. It is therefore the plaintiff prays to allow this application.

03. The defendants have filed their say overleaf to this application and strongly resist the application and contended that, the plaintiff has filed false application. It is not tenable. The defendants have contended that, the plaintiff has filed this application without giving any reason of delay. It is therefore, the defendants prays to reject the application.

04. On going through the application, say and argument advanced by the plaintiff. It seems that the plaintiff has filed the present suit for partition and perpetual injunction. The plaintiffs have sought proposed amendment on the basis of subsequent events. Therefore, I am relied in the following case laws.

In Krishnaji Shankar Moghe Vs. Sitaram Gangadhar Shende reported in 2003 (1) Mh.L.J. 233 wherein held that,

"Amendment based on subsequent event – Subsequent event which have occurred after initiation of proceedings sought to be introduced by way of amendment. If such amendment is necessary to decide the real controversy between the parties then such application cannot be rejected merely on the ground of delay or that the party to the proceeding will have to lead evidence consequent to the amendment of the pleading. Refusal of the amendment application cannot be justifiable".

In Revajeetu Builders and Developers Versus Narayanswami and Sons and Others [2009(6)ALL MR 986,(S.C)].Hon'ble Supreme Court held that:

"Whether amendment is necessary to decide real controversy, the first condition which must be satisfied before the amendment can be allowed by the Court is whether such amendment is necessary for the determination of the real question in controversy. If that condition is not satisfied the amendment cannot be allowed. This is the basic test which should govern the Courts discretion in grant or refusal of the amendment. Courts have very wide discretion in the matter of amendment of pleading but Courts powers must be exercised judicially and with great care."

The Hon'ble Supreme Court has given basic principles to be taken into consideration while allowing or rejecting amendment.

- (1) Whether the amendment sought is imperative for proper and effective adjudication of the case?*
- (2) Whether the application for amendment is bona fide or mala fide?*
- (3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;*
- (4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;*
- (5) Whether the proposed amendment constitutionally or fundamentally change the nature and character of the case? And*
- (6) As a general rule, the Court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application. There are only illustrative and exhaustive. (para 67,68).*

05. In view of above case laws and present application, the proposed amendment is on the basis of subsequent alleged act of the defendants. Learned advocate for the defendant has taken objection that, the alleged sale deed executed on 16.03.2012. This proposed amendment is time barred. It is alleged by the plaintiff that, the defendant No.04 has executed sale deed in favour of the defendant Nos.07 and 08. The defendants would have get opportunity to file additional written statement to the amended plaint. Therefore, I am of the view that the proposed amendment is necessary to decide the

real controversy between the parties. In the result, I proceed to pass the following order.

:: ORDER ::

01. Application at Exh.72 is hereby allowed subject to cost of Rs. 500/- (Rs.Five hundred only). Cost to be given to the defendants.
02. The plaintiff is further directed to amend the proposed amendment within stipulated period and submit the amended plaint.

Place : Mohol.
Date : 19.11.2019.

(R. N. Gaikwad)
Civil Judge Junior Division,
Mohol

CERTIFICATE

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

Name of Stenographer : S.P.Doke
Court : Civil Judge Junior Division and
Judicial Magistrate First Class,
Mohol.
Date : 19.11.2019.
Judgment /order signed
by the Presiding Officer
on : 19.11.2019.
Judgment /order uploaded
on : 19.11.2019.