

ORDER BELOW EXH. 97 IN R.C.S. No. 253/2000

01. This is an application filed by plaintiff under Order 6 Rule 17 of Code of Civil Procedure for amendment in plaint.

02. According to plaintiff, in para no. 1A of the plaint the area of C.T.S. No. 100/A is 186.05 is incorrectly mentioned, which ought to have been 186.50. So also, on the basis of sale-deed dated 25.03.2013 the proposed defendant nos. 6 to 8 are necessary parties to the suit. Hence, plaintiff prayed for amendment in plaint.

03. In retort, according to defendants, the application is not within limitation. The proposed defendants are no way concerned with the suit property. The sale-deed is of 25.03.2013 which is not of suit property. The application is not maintainable. With these contentions defendants prayed for rejection of application.

04. Perused record. Heard Learned Advocate for plaintiff and defendants. Before advertng to the instant application filed by the plaintiff, it is just and necessary to go through the provisions of Order 6 Rule 17 of Civil Procedure Code, which states that "the Court may at any stage of the proceeding allow either party to alter or amend his pleadings in such a manner and on such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties." But there is an exception that no application for amendment shall be allowed after the trial has commenced unless the court comes to the conclusion that in spite of due diligence the parties would not have raised the matter before the commencement of the trial. Thus, after amendment in Civil

Procedure Code in 2002 due diligence is added vide Order 6 Rule 17. The present suit is of 2000. So, the amended provision of Code of Civil Procedure would not be applicable to the present suit.

05. In the case in hand, the amendment sought in the area of C.T.S. No. 100/A is of formal nature. However, the plaintiff wants to add proposed defendant nos. 6 to 8 as party to the suit. Here, it would be imperative to note that the sale-deed dated 25.03.2013 is in respect of C.T.S. No. 99/B and not in respect of suit property C.T.S. No.100/A. There is no pleading in application itself as to how defendant nos. 6 to 8 are necessary party to the suit. On perusal of sale-deed dated 25.03.2013, it emerges that, proposed defendant nos. 6 to 8 are the vendors of C.T.S. No. 99/B. There is no explanation as to how the proposed defendant nos. 6 to 8 are the necessary parties to the suit. Here, it would be profitable to rely on the case of **Panduang K. Gaudo (D) through L.Rs.v/s Madachem Bat Mines Pvt. Ltd. reported in 2018(4) Mh.L.J. 147** wherein it was held that amendment found absolutely not relevant for deciding real controversy in suit cannot be allowed. In the case in hand, the proposed defendant nos. 6 to 8 cannot be necessary parties to the suit. Hence, it would not be proper to allow amendment in respect of proposed defendant nos. 6 to 8. In the result, I proceed to pass the following order :-

ORDER

01. The application Exh. 97 is partly allowed.
02. Plaintiff to carry out necessary amendment in the plaint within 14 days from today in respect of area of C.T.S.No. 100/A.

03. The rest of amendment sought against defendant nos. 6 to 8 stands rejected.

Date :- 13-07-2018.

(R. T. Ghogle)
3rd Jt. Civil Judge S.D., Karad.