

Rohit Laxmichand Bheda --- **Plaintiff**

Vs.

Ramesh Rangrao Jadhav & Ors.---- **Defendants**

**Order below Exh. 74**

1. This application is filed by the plaintiff under Order 6 Rule 17 of Civil Procedure Code for amendment in the plaint. The defendants have filed say to this application at Exh. 77. They have taken strong objection to the application on the ground that the application is time barred, the reason for this suit is not subsisting as well as the previous application filed by the plaintiff at Exh. 63 for the amendment in the plaint was withdrawn without permission of the Court to file a fresh. Heard, both sides at the length. Advocate for the plaintiff submitted that the plaintiff has ownership on the 1200 shares which were in the possession of the defendant Nos. 1 and 2. The defendants have sold the shares in the open market and obtained money. In fact the defendants have not right to sell the shares and grab the sale amount.

2. I have gone through the plaint and proceeding according to plaintiff, 200 shares were returned to the plaintiff with objections. In fact, the sale amount of those shares was already paid by plaintiff to defendant No. 3 for the loan obtained by the defendant Nos. 1 and 2 from defendant No.3. The 200 shares were split up and were changed to 1200 shares. The defendant Nos. 1 and 2 have their names to the shares and by taking disadvantage of their names they have sold the shares and grab the amount.

3. From the pleading it is seen that the plaintiff has made prayer to have 1200 shares back from the defendant Nos. 1 and 2. Now, the shares have been allegedly sold by defendant Nos. 1 and 2

before 12/01/2006 therefore, the amendment in the pleading in respect of amount of shares is necessary. Though the similar application at Exh. 63 was withdrawn by the plaintiff, he cannot prevent from filing this application.

4. Advocate for the plaintiff relying on the decisions in *Rameshbhai Maganbhai Patel VS. Dakshay Kumar Dineshkant Patel, reported in AIR 1995 Gujarat 130.* He also relied on the decision in *Mrs. Suneel Sodhi & Ors. Vs. M. L. Sodhi & Ors. reported in AIR 2004 Delhi 99* and *Kantabai @ Kanhopatra@Chandrabhaga w/o. Madhukarappa Dahake Vs. Kashinath Gangaram Ghate & Ors. reported in 2015 (5) ALL MR 278.* The principle laid down in the cited cases is that, *the proposed amendment can be allowed at any stage but no prejudice would be caused to other side by introducing proposed amendment.*

5. Advocate for the defendants relied on the decisions in *Radhikadevi Vs. Bajrangi Singh & Ors. reported in AIR 1996 S. C. 2358* and *Girish s/o. Bapusaheb Bhor Vs. Ambadas s/o. Chandrabhan Perne reported in 2015 (1) Mh. L. J. 916.* The facts of the cited cases are different from the present case but the principle is that *the amendment cannot be allowed unless court comes to the conclusion that despite due diligence a party could not have raised matter before commencement of trial, no amendment can be permitted.* In the present case the trial is not commenced yet therefore, with due respect these decisions are not applicable here.

6. In the present case the evidence of either party is not started therefore, the defendants will have opportunity to file written statement in respect of the amended plaint. The plaintiff has filed this application not at belated stage. The defendants will not have any harm if the proposed amendment is allowed. Therefore, in view of

submissions, objections and cited decisions this application deserves to be allowed. In the result I pass the following order.

**ORDER**

1. The application is allowed.
2. Plaintiff to carry out proposed amendment till next date and thereafter furnish copy of amended plaint.

(Dictated and pronounced in open Court)

Karad  
Dt. 26/10/2015

**(P. A. Savadikar)**  
Civil Judge Sr. Dn. Karad.

Ganesh D. Jadhav,  
Stenographer (L.G.)