

ORDER BELOW EXH.127 IN REG.CIVIL SUIT NO.30/2006

1. Plaintiff has filed present application for amendment in the plaint.

2. It is contended by the plaintiff that, the suit was filed for partition & separate possession of old Survey No.86/0 and New Gat No.630 but even though plaintiff & defendants are cultivating all the properties separately, no partition was effected. At the time of filing of suit there was dispute with respect to only suit property bearing No.630. But now defendants are disputing about the remaining properties. So it is necessary to add all the properties in the present suit. Thus the plaintiff prayed for amending the plaint with respect to all details regarding all the properties.

3. Defendants No.3 to 16 filed their say at Exh.131. They objected strongly for said amendment. It is contended by defendants that the suit was filed in the year 2006 and the defendants have filed their written statement in 2007 & 2008. Plaintiff has filed his evidence at Exh.120. His evidence is now closed and now the plaintiff is praying for amendment in the plaint. The amendment is of different nature than the suit. If the amendment will be granted, again defendants have to file additional written statement and there will be

necessity to lead additional evidence. Plaintiff has filed present application after six years and it is applied at very belated stage. In fact, plaintiff has objected for the transaction of defendants No.1 & 2. The main prayer of plaintiff is regarding the sale deed executed by defendant No.1 and so the present amendment will change the nature of the suit. Therefore defendants prayed for rejecting the application.

4. Heard both the advocates. It is clear from the record that,originally plaintiff has objected about the sale deed executed by defendant No.1 with respect to part of Gat No.630. But even in the original suit plaintiff has shown the genealogy tree and has pleaded about the shares of all the parties. It is also clear from the written statement of the defendant that,at the time of filing of the said written statement they have taken objection that the plaintiff can not ask for partial partition. It is settled position of law that,if all the properties are not brought in common hotchpot,the suit for partition is liable to fail. Considering this position of law,if the plaintiff will not be allowed to amend the plaint,he will suffer irreparable loss. But as the plaintiff is praying for amendment after six years from filing of the suit and even though defendants have taken objection about it,plaintiff is directed

to pay cost of Rs.700/- to defendants No.2 to 16.
On payment of cost,the plaintiff will be allowed to
carry out necessary amendment within seven days.

Dated:7-8-2012.

(Sou.P.P.Karnik)
Civil Judge,Sr.Dn.,Karad.