

ORDER BELOW EXH. NO. 27 IN R.C.S. NO. 192/2015SADASHIV V/S BALU

This is an application under Order 6 Rule 17 of the Code of Civil Procedure for permission to amend the plaint.

2. The application in short is that, this is a suit for partition. The defendant has raised objection that, the plaintiff has not joined necessary parties and properties in the suit. Therefore so as to remove this technical objection, it is necessary to amend the plaint.

3. By way of amendment, the plaintiff has claimed to insert names of mother and sisters of plaintiffs and defendants, add properties situated at Malawadi bearing Grampanchayat house No. 785, block No. 210, 264. It is also claimed to mention that, mother and sisters of plaintiffs and defendants have relinquished their share. But so as to remove technical defect, it is necessary to join them in the suit. There are certain properties, which parties have acquired from their own income. Hence they are not joined in the suit.

4. The above amendment is not going to change the nature of the suit. It is necessary to decide real dispute between the parties. Hence it is just to allow the application.

5. Defendant No.1 has filed his say at Exh. 31. It is contended that, certain suit properties are not ancestral properties. The plaintiff has conceal material fact from the Court. Plaintiff cannot amend the plaint after raising objection by the defendant. Hence application be rejected.

6. Heard learned Advocate Shri. Karande for the plaintiff and learned Advocate Shri. Bhosale for the defendant. They have submitted as per their contentions.

7. Application is firstly objected on the ground that, suit properties claimed to be added are not ancestral properties but it is necessary to mention that, said point can be decide in the suit and not by present application. Court cannot go on merit of the facts at the time of deciding such applications. Hence application cannot be rejected on this ground

8. It is alleged that, the plaintiffs have suppressed the material facts. It is necessary to mention that, non-mentioning of particular fact in a plaint cannot be said to be suppression of material fact in every case. Therefore in present case, there is nothing material which is suppressed by the plaintiff. Hence application cannot be rejected on this ground.

9. Application is also resisted on the ground that, plaintiff cannot claim amendment after raising objection by the

defendant. It is necessary to mention that this is a suit for partition. Adding certain properties and parties is necessary to decide real controversy between the parties. It is not causing any prejudice to the defendants. Moreover, it is not removal of admission. Therefore application cannot be rejected on this ground.

10. The Hon'ble Supreme Court was pleased to held in case of Usha Balasaheb Swami Vs. Kiran Appasaheb Swami , reported in 2007(5) Mh.L.J.(SC) 593, that “ court should be liberal in granting prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to other side or amendment is not bonafide.” In present case, proposed amendment is not going to change the nature of the suit. It is not going to cause prejudice to the defendant. This is a suit for partition, therefore joining of necessary parties and properties in the suit is necessary so as to decide real controversy between the parties. Hence application deserves to be allowed subject to costs of Rs.100/-. Therefore order as under.

ORDER

- 1) Application is allowed subject to costs of Rs.100/-
(Rupees One Hundred only).
- 2) The plaintiff to carry out amendment, file amended
plaint and pay costs on or before 18/03/2016. Failure

to do so, application will stand automatically
rejected, without express order.

Date : 10/03/2016

(S.S.Deshmukh)

Dahiwadi

Jt.C.J.J.D. Dahiwadi