

ORDER PASSED BELOW EXH.63 IN R.C.S. NO.76 /2013

This is an application filed on behalf of the plaintiff for amendment of the plaint as per the provisions of Order 6 Rule 17 of the Code of Civil Procedure. s

2] It is the contention of the plaintiff that he has filed the suit on the basis of right of preemption to purchase the suit land. The defendants have filed the written statement at Exh.33 and raised the contention that the daughter of deceased Namdev are not impleaded as parties and therefore the suit is bad for non-joinder of necessary parties. It is contended that the daughter of Namdev is died. In order to avoid the technical defect, plaintiff wants to add the legal heirs of the deceased daughter of Namdev on record. It is contended that the amendment is of formal nature. It does not change the nature of the suit. Hence, the application be allowed.

3] The said application is opposed on behalf of the defendant on the ground that there is delay in filing the application. After raising the contention by the defendants the present application is filed. Hence application be rejected. In the alternate if the application is allowed heavy cost be imposed.

4] Heard both sides. After going through the rival pleadings of both the parties, following points arise for my determination and my findings with reasons stated there on are as follows.

<u>Point</u>	<u>Findings</u>
1 Whether the Plaintiff has made out the case for granting permission to amend the plaint and whether the proposed amendment is necessary for determining real controversy between parties ?	Yes.
2. What order ?	As per final order

REASONS

As to point no.1:

5] Perused record and proceedings. The plaintiff has filed the suit on the basis of right of preemption to purchase the suit land. The defendants appeared and filed their written statement and contended that the daughter of deceased Namdev is not made as party. Hence, suit is bad for non-joinder of necessary parties. It is the contention of the plaintiff that the daughter of Namdev is died and plaintiff wants to take on record her legal heirs as defendant no.4 to 7. That the plaintiff wants to avoid the technical defect of non-joinder of necessary parties. The proposed amendment is of formal nature. It does not change the nature of the suit. The proposed amendment is necessary for determining the real controversy between the parties and avoiding the multiplicity of proceeding. The proposed amendment will not cause any prejudice to the defendants. The inconvenience caused to the defendants due to the delay can be compensated by way of cost. Hence, I answer, point no.1 in the affirmative.

As to point no.2 :

7] Plaintiff has made out the case for allowing his application for amendment. Hence the application of the plaintiff is required to be allowed. Therefore, I pass the following order.

ORDER

1. Application Exh.63 is allowed subject to cost of Rs.500/- to be paid to the defendants on or before next date.
2. On payment of cost plaintiff is directed to carry out the amendment within 14 days and file the amended copies of the plaint on record.

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3. After filing the amended copies of the plaint on record, issue summons to defendant no.4 to 7.

Dahiwadi
Date : 06.01.2017

(**R.V.Wanwadi**)
Civil Judge J.D., Dahiwadi