

Order Below Exh.51 in R.C.S.No.07/2009.

The plaintiff has filed this application under Order 6 Rule 17 of Code of Civil Procedure for amendment in plaint. In the present application plaintiff has specifically sought 2 reliefs. One is that defendant no.1 is died on 03/07/2009, therefore his legal heir namely shri Purushottam Shankar Purandare be taken on record. Secondly, plaintiff has sought amendment in plaint and by way of proposed amendment the plaintiff is seeking the partition of the suit property and seeking possession of his 1/2 share in the suit property by way of partition.

2. According to plaintiff suit properties are the tenancy land and ancestor of the plaintiff and defendant no.2 was tenant in the said land and on the tillers day the defendant no. 2 was cultivating the land as per manager of Hindu joint family and on the tillers day after paying the purchase price name of defendant no.2 is recorded in the suit property. Hence, plaintiff and defendant no.2 having 1/2 share each in the suit properties. Therefore, plaintiff is seeking the partition of his share by way of proposed amendment in the plaint. Hence, the application.

3. To this application defendant no.2 and 3 have filed their say at exh.56 contending therein that the deceased defendant no.2 has other legal heirs other than Purushottam Shankar Purandare and they have submitted their names in say. Therefore, the plaintiff is not all legal heirs of deceased defendant no.2. Hence, the application is not legal, proper and maintainable. Also, they have contended that the remaining proposed amendment which is sought in para no.5 is not legal & it will be change the nature of the suit if allowed. Plaintiff is seeking declaration of ownership in the suit and by way of this application he is seeking the

partition of the suit properties. Hence it will change the nature of the suit if allowed. Therefore, defendants prayed to reject the application.

4. Heard both sides. I have perused proposed amendment in the light of plaint. The present suit is filed for declaration of ownership and he is seeking the ownership of 1/2 share of the suit properties. As per the plaint the suit property was tenancy land and grandfather of plaintiff and defendant no.2 was tenant in the said land. According to the plaintiff his father and the defendant no.2 had paid the purchase price on tillers day and they became owner of 1/2 share of suit properties respectively. By way of the proposed amendment the plaintiff is seeking partition of said 1/2 share and also intending to amend the plaint by adding some paras in the plaint regarding payment of purchase price by father of plaintiff & defendant no.2. Thus in the plaint the plaintiff sought declaration of ownership of his 1/2 share and by way of proposed amendment he is seeking the partition of that 1/2 share. Thus, on perusal of amendment in the light of plaint it is seen that the proposed amendment is in consonance with the plaint and also it will not change the nature of the suit. Plaintiff is only seeking partition of his 1/2 share for which he is already sought declaration of ownership in the suit. Therefore, proposed amendment appears necessary to determine the real controversy between the parties. Hence, application deserves to be allowed.

5. So far as the amendment regarding taking the legal heirs of defendant no.2 is concern, it is seen that plaintiff are not seeking all the legal heirs of deceased defendant no.2 to take on record. Therefore, to that effect it requires to direct the plaintiff to file the separate application by giving the names of all legal heirs of deceased defendant

no.2. Therefore, application deserves to be partly allowed. Therefore, I pass the following order-

Order

1. Application is partly allowed.
2. Plaintiff is directed to carry out the amendment as sought in para no.5 of the application within 14 days of this order.
3. Plaintiff to file separate application for taking the legal heirs of deceased defendant no.2 on record by giving the names of all legal heirs of deceased defendant no.2.
4. No order as to costs.
5. Application is disposed of accordingly.

KHANDALA
Date :-01/12/2015

(N. N. Joshi)
Jt.C.J.J.D., Khandala.

