

ORDER BELOW EXH.70 IN R.C.S.No.22/2008 :-

1) This application has been filed by defendant Nos.4 to 6 for amendment of their W.S. They have contended therein that their application at Exh.68 for permission to lead secondary evidence of the partition-deed came to be rejected as their W.S. does not contain clear pleadings regarding the partition-deed. Plaintiff has produced certified copy of the registered partition-deed. The burden to prove its contents is upon defendant Nos.4 to 6. Therefore, it is necessary to incorporate pleading regarding custody of the registered partition-deed dated 26/12/2007 in their W.S. The amendment is based upon subsequent events and it will not change the original defence raised by them. Therefore, they have prayed that the application be allowed.

2) The plaintiff has filed his say at Exh.74 and thereby he has resisted the application by contending that the application is filed at a belated state without any just cause. The defendants are trying to create evidence by way of proposed amendment which is not legally permissible. The application is filed to prolong the proceeding. Therefore, the same be rejected.

3) The defendant Nos.1 & 2 in their say at Exh.75 have also raised the similar contentions and objections to the application and have further contended that the amendment is barred under Order-6, Rule-17 of Civil Procedure Code, 1908. Therefore, the application cannot be allowed.

4) Heard Learned Advocates for both sides. Perused

proposed amendment, original pleadings of defendant Nos. 4 to 6, plaint and the record.

5) The suit is for partition and separate possession alongwith consequential relief of perpetual injunction. The plaintiff has disputed the legality and validity of the registered partition-deed dated 26/12/2007 claiming it to be hallow and bogus one. The defendant Nos.3 to 6 have based their defence upon the registered partition-deed dated 26/12/2007. It is specific contention of the plaintiff that the disputed partition-deed is in the custody of defendant No.5. The defendant Nos.3 to 6 have denied the said contention, but they have not raised any specific defence about its custody. It can be seen that the disputed partition-deed is the material piece of evidence in the present suit.

6) Parties are at dispute regarding the custody of the original partition deed. The decisions on Exhibits 67 & 68 are not relevant for the decision of this application and cannot be considered as a basis for the purpose of moving this application. The present application will have to be decided on its own merits. By way of proposed amendment, defendant Nos.4 to 6 seek to introduce pleading regarding the custody of registered partition-deed dated 26/12/2007 as well as the pleading regarding the amount acquired by the plaintiff by transferring joint family property. The proposed amendment is not inconsistent with the original pleading of defendants.

7) The Ld. Counsel for defendants No.4 to 6 has placed reliance upon following authorities in support of his

submissions;

- I) ***Usha Balasaheb Swami and others Vs. Kiran Appaso Swami reported in 2007 (1) SCCR 703***
- II) ***Andhra Bank Vs. A.B.N. Amro Bank N.V. and others reported in AIR 2007 Supreme Court 2518***
- III) ***Mudra Salt and Chemical Industries Vs Collector, Thane and others reported in 2001 (3) Mh.L.J. 151***
- IV) ***Rajani Mohanlal Shivnani Vs. M/s.Krishna B. Kapur reported in 1992 Mh.L.J. 530***

8) In **Usha Balasaheb Swami and others** (*Supra*), the Hon'ble Apex Court has laid down that *it is now well settled by various decisions of this Court as well as those by Hon'ble High Courts that the Courts should be liberal in granting the prayer for amendment of pleadings, unless serious injustice or irreparable loss is caused to the other side or on the ground that the prayer for amendment was not a bonafide one and general principle applicable to amendment of plaint cannot be made applicable for the amendment of written statement.* In **Rajani Mohanlal Shivnani** (*Supra*) it is further laid down that error of Counsel should not be allowed to prejudice party. The said observation is made with regard to amendment of plaint.

9) In **Andhra Bank and Mudra Salt and Chemicals Ltd.** (*Supra*), it is laid down that while

considering application for amendment, merits of the amendment can not be considered. Therefore, in view of the above ratio it is not necessary as well as desirable to go into the merits of the proposed amendment. Also it can be seen that amendments to written statements are to be construed liberally.

10) Admittedly, plaintiff as well as defendant Nos.1 & 2 have adduced their evidence. The application is filed at a belated stage after commencement of trial. However delay cannot be the sole ground to reject the application if otherwise no grave injustice or prejudice is caused to the rival party if the application is allowed and the amendment is necessary for the purpose of resolving real controversy between the parties, especially in the light of the contentions raised in the application.

11) The partition-deed dated 26/12/2007 is decisive in the present suit and the whole defence of the defendants is based upon it. Therefore, the proposed amendment is necessary for the purpose of resolving real controversy between the parties conclusively as well as to avoid multiplicity of the proceedings. Aggrieved party can be compensated in terms of cost for the delay. In view of the above discussion and the ratio laid down in the authorities, relied upon by the defendants, the application deserves to be allowed subject to certain amount of costs. In the result, following order is passed.

ORDER

- 1) The application (Exh.70) is allowed subject to cost of Rs.500/- (Rs.Five hundred only) to be paid to the plaintiff.
- 2) The defendant Nos. 4 to 6 shall pay the above amount of cost to the plaintiff within 7 days and shall carry out the amendment in their W.S. within 14 days. They shall also submit amended copy of W.S. on record immediately.
- 3) Costs in cause.

Place : Koregaon
Dt/-17/04/2015

(Sachin B.Pawar)
III Jt-Civil Judge Junior Division
Vaduj, Presently on deputation to
Jt.Civil Judge Jr.Dn. Koregaon