

ORDER BELOW EXH. 117 IN R.C.S. NO. 114/2004.

1. The plaintiffs have moved this application for amendment in the plaint. It is contended by the plaintiffs that the plaintiffs have amended their suit for partition and separate possession of the suit properties. After the amendment has been allowed by this court the plaintiffs have give to oversight failed to amend this suit and failed to give the necessary valuation of the suit properties in view of the amendment. Hence by this application the plaintiffs have proposed amendment in the valuation clause by giving valuation of suit property 1A @ Rs. 2380/- and valuation of suit property 1B and 1C @ Rs. 15,000/- each. Plaintiffs have also proposed claim of exemption with respect to plaintiff no.4 as she is being woman. In all the plaintiffs have proposed the valuation of this suit @ Rs. 38,380/- instead of Rs.6,000/-.

2. The defendants have contested this application by filing their say. It is contended by the defendants that the plaintiffs have filed evidence clause pursis on 8/1/07 and on 23/07/07, both the parties have argued with respect to their claims. Thereafter on 1/8/2007 the plaintiffs have moved an application for amendment and after allowing that

application the defendants have filed their written statement on 12/12/2007 and by filing their written statement the defendants have raised the objection about the valuation of the suit. Again on 28/02/2008 the plaintiffs filed pursis to close their evidence and after recording evidence of defendant on second time, both the parties have finally argued with respect to their claims. Hence this application is filed after parties have argued finally. It is also contended by the defendants that if this application is allowed, then cost of Rs.5,000/- may be awarded to them.

3. From the rival contentions of both the parties following points arise for my consideration. These points finding thereon with reasons dare as under.

POINTS	FINDINGS
1. Whether the proposed amendment is necessary for adjudication of the suit?	In the affirmative.
2. Whether proposed amendment would change the nature of the suit?	In the negative.
3. Whether proposed amendment would prejudice claim of defendants?	
4. What order?	As per final order.

R E A S O N S

4. Both the advocates argued on the point of

necessity of amendment. It is argued by advocate of plaintiffs that the plaintiffs have carried out an amendment in their claim and have demanded partition of the suit properties, if this court comes to the conclusion that the defendants are having undivided share in the suit properties. While carrying the amendment due to the oversight the plaintiffs have not proposed necessary amendment for valuation of the suit for the purpose of partition decree. Hence by this application the plaintiffs are proposing the valuation of the suit for partition decree.

5. The learned advocate for defendant argued that the amendment proposed by the plaintiffs is after loss of one year from the closing of evidence of plaintiffs. He also argued that there is a gross delay in proposing the amendment, though the defendant have raised an objection about the valuation of the suit for filing their additional written statement on 12/12/2007. Hence he submitted that the amendment proposed by this application is without any cause and if such amendment is allowed, then cause of Rs.5,000/- be awarded to the defendants for compensating the delay.

6. **AS TO POINT NO. 1 TO 3 :-**

The plaintiffs have filed this suit firstly for decree of injunction and possession against the defendant. On the pleadings that the defendants have an authorisedly occupied the suit property 1B which is ancestral property of father of plaintiff nos. 1 to 3 and husband of plaintiff no.4. It is also pleaded by the plaintiff that the father of plaintiff nos. 1 to 3 was having unlawful relations with defendant no.4 and in the subsistence of that relation the defendant no.4 have given birth to defendant nos. 1 to 3. The defendant nos. 1 to 4 are not having title to occupy the suit property 1B. By application at exh.64 the plaintiffs have carried out an amendment in the pleadings contending that if this court comes to the conclusion that the defendant nos. 1 to 3 are also entitled for sharing the suit properties, then share of each of the plaintiff may be supported and accordingly plaintiffs have prayed for decree of partition and separate possession. This application was allowed by this court by order dt. 11/9/2007 thereafter defendants have filed their additional written statement and have contested this suit on the ground that the defendant has raised a new construction of the house in suit property 1B and has incurred Rs.2,30,000/- for construction of the house. It is also contended

that the plaintiffs have not valued the suit property 1B @ Rs.2,30,000/- and as such if this valuation of the property is considered, then this plaint deserves to be returned to the plaintiff as this court may not have jurisdiction to try the suit on the point of pecuniary valuation. After this pleadings the defendants have led their evidence and now by this application the plaintiffs have proposed the valuation of the suit with respect to partition deed. Once the amendment with respect to the pleadings prayer of partition has been allowed, it is incumbent on the plaintiffs to give the proper valuation of the suit. More particularly the plaintiffs have to give the proper valuation of the house properties wherein they are claiming their share. Now as by this application plaintiffs are valuing their prayer of partition, such valuation is necessary for determining jurisdiction of this court. By written statement the defendants have contested the claim on the ground that the valuation of the house property 1B is Rs.2,30,000/- and due to this valuation the jurisdiction of this court may be ousted. But at this juncture it is necessary to consider the requirement of the plaint and as per provisions of order 7, plaintiff must give the valuation of the property for claiming a decree of partition.

Now by this application plaintiff has valued suit property 1B and 1C @ Rs.15,000/- each. In the light of pleadings of defendant that the valuation of the suit property 1B is Rs.2,30,000/-. It is necessary to consider the proper valuation of the suit property 1B. Though the plaintiffs have valued suit property 1B @ Rs.15,000/-, the defendant can challenge this valuation by submitting their additional pleadings. At this stage it is only necessary to consider whether the proposed amendment is proper or not. As stated hearing above as the amendment with respect to prayer of partition decree has been allowed, the proposed amendment with respect to valuation of those property is essential for adjudication of the suit. Whether the valuation claimed by the plaintiffs is proper or not can be considered at the time of final hearing.

6. Considering the grievance of defendant that the proposed amendment is suggested after gross delay, it cannot be allowed, but for the structure of the suit and for the jurisdiction of this court the proposed amendment is necessary. No doubt the delay has been caused by the plaintiffs to purpose such amendment, but such delay can be compensated by awarding certain cause to the defendant as well as the parties

can be lead their evidence for adjudication of the suit in view of proposed amendment. In these circumstances I find that the amendment suggested by the plaintiffs is necessary for adjudication of the suit as well as necessary for adjudication for jurisdiction of this court. By the proposed amendment the plaintiffs are only suggesting valuation of the suit property. Hence it would not change the basic nature of the suit or it would not cause any prejudice to the defendant as the defendants are at liberty to give their additional pleadings. Accordingly I answer point no. 1 in the affirmative and point nos. 2 and 3 in the negative and of point no.4 by following order.

ORDER

1. Application is allowed.
2. The plaintiffs are directed to carry the amendment in the pleadings on or before 21/11/2008.
3. This application is allowed subject to cost of Rs.500/- (Rupees Five Hundred Only) to the defendants.
4. Costs in main cause.

Place : Patan

Date : 18.11.2008

(P.P. Kestikar)
Jt. Civil Judge Junior Division,
Patan.