

**ORDER BELOW EXH.53 IN R.C.S NO.152/2014.**

1. This is an application made by the plaintiffs for amendment of their pleadings under O. 6 R. 17 of C.P.Code.

2. The plaintiffs have contended that, at the time of hearing on the temporary injunction application, the application Exh.40 made by third party Pandurang Vitthal Suryavanshi was allowed. Now, the plaintiffs want to incorporate better particulars in respect of the adoption deed relating to plaintiff No.2. The name of father of plaintiff No.1, at some places in the revenue records appears as "Dyanu", whereas, at some places it appears as "Jaanu". Therefore, carrying out amendment of the pleadings has become necessary.

3. The plaintiffs have sought amendment in title of the suit for incorporating the words " alias Jaanu" in front of the words "Ganpat Dyanu". They have further sought addition of the third party applicant as a party defendant No.3. They have sought permission to incorporate certain pleas in para No. 3 and 4 of the plaint pursuant to addition of party defendant and for giving better particulars of the alleged adoption of plaintiff No.2. Lastly, they have sought amendment in prayer clause of the plaint.

4. According to plaintiffs, the proposed amendment is

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necessary for making their claim more clear and precise. It will not change the nature of suit. Finally, the plaintiffs have prayed for allowing the amendment.

5. The application is supported by affidavit of plaintiff No.2.

6. The defendants have filed their reply at Exh.58. According to them, the application is not legal and true. The suit is simplicitor for injunction. Therefore, better particulars in respect of the so called adoption are not necessary. The proposed amendment is going to change nature of the suit. On these and other grounds, the defendants have prayed for rejection of the application. In the alternative, they have prayed for imposing heavy costs on the plaintiffs if the application is allowed.

7. Heard Shri. A S. Mane, learned Advocate for plaintiffs and Shri. K P. Kadam, learned Advocate for defendants. Following points arise for my consideration to which I have recorded my findings with reasons thereunder:

SN.	POINTS FOR CONSIDERATION	FINDINGS
1	Whether the proposed amendment is necessary for the purpose of determining the real question in controversy between the parties ?	<b>Yes.</b>

2	Whether the proposed amendment will change the nature of suit ?	No.
3	What Order ?	As per the final Order.

-: REASONS:-

8. As to points No.1 and 2 :- The suit is for perpetual injunction restraining the defendants from causing obstruction to the possession of plaintiffs over the suit property. It is asserted that, the plaintiff No. 2 was taken into adoption by Subhadra Laxman Sawant, who was an owner of one half share out of the suit property. The remaining one half share was purchased by plaintiff No. 1 on 21/04/1993.

9. A third party Pandurang Vitthal Suryavanshi made an application Exh. 40 for impleading him as party defendant. The said application was allowed by an Order dated 21/10/2015. The application under consideration has been made thereafter.

10. The plaint shows that the plaintiffs have **pleaded** in respect of an adoption deed dated 16/05/1990. Now, by way of the proposed amendment, the plaintiffs want to incorporate better particulars in respect of the alleged adoption. It appears that the plaintiffs want to make their claim more **clear** and **precise**. The trial in the suit has not yet commenced. Looking to the existing

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pleadings of the parties, the proposed amendment would be necessary and helpful for the purpose of deciding the real question in controversy between the parties.

11. As regard to the prayer of adding the third party applicant as defendant No.3, an Order in that regard has already been passed below application Exh.40. The amendment sought in para 4 of the plaint would not be necessary as the word “खरेदी” already exists in the pleadings at the relevant place. The amendment sought in title of the suit is formal in nature. The amendment sought in prayer clause can be allowed as it is pursuant to the addition of the third party as a defendant.

12. In view of the above discussion, the proposed amendment can be allowed to the extent above. It will not change the basic nature of the suit. Hence, the points No. 1 and 2 are answered accordingly.

13. **As to point No.3** :- In view of the findings on points No.1 and 2, the application deserves to be allowed. In answer to point No.3, the following Order is passed.

**ORDER**

1. Application Exhibit.53 is allowed in following terms.
2. The plaintiffs are permitted to carry necessary amendment

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**only** in title of the suit, para 3 and prayer clause of the plaint within fourteen (14) days from today. The plaintiffs to file copies of amended plaint within the said period.

Patan.

(M V.Phade)

Date :10/02/2015.

Jt.Civil Judge. J.D. Patan.