

MHST130007132017 	R.C.S. No. 92/2017 Vilas Bartakke Vs Vidhyatai Relekar & others
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ORDER BELOW EXH.41

The present application is filed by Defendant No. 1 seeking permission to amend the written statement at Exhibit 25.

02. By the proposed amendment, Defendant No. 1 seeks to insert an additional paragraph 14A after paragraph 14, elaborating upon the alleged family arrangement in respect of the suit property described in clause 1A, the manner in which the northern constructed house and the southern open space were allegedly allotted for enjoyment, and further to provide additional details regarding the genealogy mentioned in clause 2 of the plaint, including particulars of the legal heirs of certain deceased members. The defendant has also reiterated objections regarding court fees, limitation, and non-joinder of necessary parties. It is contended that the proposed amendment is necessary for proper adjudication of the dispute, is consistent with the original defence, does not change the nature of the written statement, and that no prejudice will be caused to the plaintiff if the amendment is allowed. It is further contended that, in the alternative, if excess area is found in possession of Defendant No. 1, appropriate valuation be made and monetary compensation be directed instead of partition.

03. The plaintiff has filed a reply opposing the application. It is contended that the written statement was filed on 30/11/2017 and the present amendment application has been filed after about eight years and after framing of issues. According to the plaintiff, all facts now sought to be introduced were within the knowledge of Defendant No. 1 at the time of filing of the original written statement, and no explanation has been offered for the inordinate delay. It is further contended that the proposed averments regarding genealogy are unsupported by documentary proof and that the suit already includes all known legal heirs. The plaintiff also denies the objection regarding court fees and limitation and submits that the application is belated and intended to protract the proceedings. A prayer for compensatory costs has also been made.

04. The record shows that the suit is one for partition and declaration. The written statement at Exhibit 25 is already filed. Issues were framed on 11/02/2022. Thereafter, the plaintiff has filed an affidavit of evidence and the matter is pending for cross-examination of the plaintiff. Thus, though issues have been framed, the stage of recording of cross-examination has not yet commenced.

05. The question for consideration is whether the proposed amendment to the written statement deserves to be allowed at this stage.

06. It is settled that amendments to written statements are to be considered liberally as compared to amendments to

plaints, as the defendant is entitled to take all possible defences, including alternative and even inconsistent pleas, provided they do not cause injustice or take away an accrued right. At the same time, once issues are framed and the matter proceeds towards trial, the proviso to Order VI Rule 17 of the Code of Civil Procedure requires the Court to examine whether, despite due diligence, the party could not have raised the matter before commencement of trial.

07. In the present case, the written statement was filed in the year 2017 and issues were framed in February 2022. The application has been moved thereafter. The plaintiff has already filed affidavit of evidence and the suit is awaiting cross-examination. In a strict sense, the trial has advanced beyond the stage of framing of issues; however, the cross-examination has not yet commenced. Therefore, though the proceedings have progressed, the recording of evidence is not substantially underway.

08. The proposed amendment insofar as it relates to insertion of paragraph 14A elaborates upon the alleged family arrangement already referred to in paragraph 14 of the written statement. It does not introduce a completely new or contradictory defence but furnishes further particulars regarding the manner of enjoyment and subsequent transaction in respect of the southern open space. Such elaboration appears to be in continuation of the earlier plea of family arrangement and possession. Similarly, the additional particulars regarding

genealogy are in the nature of further details concerning alleged heirs and the plea of non-joinder of necessary parties, which is a defence already open to the defendant in a partition suit.

09. Though it is true that the defendant has not given a detailed explanation for the delay of several years, mere delay by itself is not a ground to refuse amendment of a written statement if the amendment is necessary for determining the real controversy between the parties and if no irreparable prejudice is caused to the opposite party. In a suit for partition and declaration, correct ascertainment of shares and identification of necessary parties is fundamental. If certain heirs are in fact necessary parties, their non-joinder may affect the final adjudication. Therefore, permitting the defendant to raise such a plea cannot be said to change the basic nature of the defence.

10. As regards the objection that no documentary proof is filed along with the application, it is to be noted that at the stage of amendment the Court is not required to adjudicate upon the correctness or truth of the proposed averments. The sufficiency of evidence in support of such pleadings is a matter for trial.

11. The objection regarding court fees and limitation has already been part of the defence and the reiteration thereof does not introduce any fundamentally new cause. The alternative plea regarding valuation of excess area and monetary adjustment is also permissible in a partition suit and does not alter the character of the defence.

12. Considering that the cross-examination has not yet commenced, and that the proposed amendment appears to amplify and particularize the existing defence rather than to set up a wholly new and inconsistent case, this Court is of the view that the amendment is necessary for complete and effective adjudication of the dispute. Any prejudice to the plaintiff can be compensated by granting liberty to file additional pleadings, if required, and by costs.

13. As a result, the application filed by Defendant No. 1 for amendment of the written statement deserves to be allowed, subject to payment of costs. Hence, I pass the following order:

ORDER

1. The application is allowed.
2. Defendant No. 1 is permitted to incorporate paragraph 14A and the additional pleadings as proposed in the application.
3. The amended written statement shall be filed within 14 days after payment of costs of Rs. 500/- to the plaintiff.

Date 20-2-2026

(Rajesh M. Lolge)
Civil Judge Jr. Division, Patan