

ORDER BELOW EXH No.26

The defendant no.1 and 2 moved present application under Order VI Rule 17 of Code of Civil Procedure for amendment in pleadings of written statement. According to them, the plaintiff has filed the suit for declaration and other reliefs. These defendants filed their W.S., however, during pendency of suit defendants got certain documents in respect of joint family of plaintiff. Therefore, defendants intent to add some additional defences by amending their W.S. The defendants prayed to allow to add para 16-A to 16-E below para 16. The proposed amendment will helps the Court to settle the real question in controversy between parties. It will not change the nature of suit. If amendment is not allowed, then defendants will suffer irreparable losses. Hence, they prayed to allow the application.

2. Plaintiff has filed his say at Exh.34. He stated that, the present application is not maintainable. Plaintiff has filed the suit for perpetual injunction and declaration about ownership of suit way. The T.I. application was pending and defendants have filed present application only to prolong the hearing of T.I. application. In proposed amendment defendants have denied the ownership of plaintiff over the suit property. However, defendants already in their W.S. in para 9 admitted that, plaintiff is co-owner with the defendants of suit property. In para 12 defendants stated that, the ancestor of plaintiff was sold some portion of suit property to defendant no.1 and 2. It shows that, defendant admitted ownership of plaintiff. Now, by way of present amendment defendants trying to withdraw the admissions as to ownership of plaintiff, which is not

permissible. Therefore, he prayed to reject the application.

3. Considering, contentions and documents following points arise for my determination. I have recorded my finding thereon for reasons recorded thereunder.

Sr. No.	Points	Finding
1.	Whether the proposed amendment is necessary to determine real question in controversy between the parties?	Yes.
2.	What order?	Application is allowed.

REASONS

As to Point No.1:-

4. Perused the record and proceeding. Heard Ld.Advocates of both parties. I also read carefully the judgments i.e. Sushil Kumar Jain V/s. Manoj Kumar & Anr. 2009 ALL SCR 2707, Basavanappa Bhimsha Koli @ Jamdar V/s. Sunil Basavanappa Jidge 2007 (6) Mh.L.J., Rajkumar Gurawara (dead) Thr. L.Rs. V/s. M/s S.K.Sarwagi & Co. Ltd.,2008 AIR, SCW 4007 and Anathula Sudhakar V/s. P. Buchi Reddy (dead) by L.Rs., 2008(5) ALL MR 451 filed by defendants.

5. On perusal of plaint it revealed that, the plaintiff come with the case that, in suit property there is 10 ft. X 10 ft. private road was existed and it is owned by plaintiff. However, defendants by resolution of Grampanchayat Dhuldev declare that, suit way is public road. Therefore, plaintiff has filed suit for declaration that suit way is private road owned by him and resolution of Grampanchayat is null

and void. Defendant no.1 and 2 at Exh.no.21 have filed their W.S. Now, defendant no.1 and 2 by way of present application wants to amend their W.S.

6. From the content of para no.3, it appears that defendants have admitted that, the suit property was owned by father of plaintiff. In para no.8 defendants mentioned that, plaintiff's joint family and others are co-owner of S.No. 10/2 D. Now, in present application defendants in their proposed amendment stated that, the plaintiff could not get any right in suit property by heirship. The defendants set up defence that, plaintiff and his brother are not legal heirs of Popat Vedpathak. Therefore, it is clear that, defendants in their W.S. admitted the ownership of father of plaintiff, however, by way of present amendment they want to denied plaintiff's right by way of heirship in the suit property. Both are different things. The previous written statement remained on record as it is and there is no change in W.S. Plaintiff has right to use the contentions of W.S. in his support at any stage of suit. In such situation the proposed amendment could not be said that, withdrawal of previous admissions in W.S.

7. Revenue Record to defendants, which shows that there is dispute of heirship of plaintiff with his father's another wife. Defendants want to set up their defence on the basis of Revenue Record in respect of suit property. Therefore, proposed amendment seems to be arise due to obtaining certain Revenue Record to defendants. The present amendment application is filed before framing of issue, therefore, it need to be taken liberally.

8. The Hon'ble Supreme Court in Sushil Kumar Jain V/s. Manoj Kumar & Anr. 2009 ALL SCR 2707, observe that, *An amendment of a plaint and amendment of a W.S. are not necessary governed by exactly the same principle. Adding a new ground of defence or substituting or altering a defence does not raise the same problem as adding, altering, substituting a new cause of action. It is equally well settled that in the case of an amendment of a W.S., the Courts would be more liberal in allowing than that of a plaint as the question of prejudice would be far less in the former than in the latter and addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the W.S. can also be allowed.*

9. From the aforesaid ratio laid down by Hon'ble Apex Court, it clear that, the amendment of W.S. need to be considered liberally. The question of prejudice would be far less in the amendment of W.S. by the addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the W.S., therefore, it can be allowed. Thus, I come to conclusion that, proposed amendment need to be consider liberal view and need to be allowed. If application is rejected then possibility of multiplicity of proceeding cannot be ruled out. It helps to Court to determine the real questions in controversy between the parties.

10. The application is file before framing issue. Therefore, in such situation it is necessary to take liberal view. However, considering the delay caused to the proceeding, some cost need to be impose on defendants. Imposition of cost of Rs. 1000/- seems to be

just and proper. For the reason noted above I answered point no. 1 in the affirmative.

As to point no. 2:-

11. For the reasons discussed above, present application deserves to be allowed. Hence, I proceed to pass following order.

ORDER

1. An application (Exh.26) is allowed subject to costs of Rs.1000/- to be paid to plaintiff on or before next date.
2. Defendant no.1 and 2 to carry out said amendments within 14 days from today and to file copy of amended W.S. with copies to plaintiff.

Phaltan.
Date: 09.07.2025

(A.S.Satote)
2nd Jt.Civil Judge Jr. Dn., Phaltan