

ORDER BELOW EXH.292 IN R.C.S. No.167/2005

NATURE OF THE APPLICATION

1. This is an application filed by plaintiffs seeking amendment in the plaint under O.6 Rule 17 of the Code of Civil Procedure.

FACTS IN THE APPLICATION

2. Plaintiffs have contended that, the suit is filed for declaration and injunction. While filing of suit plaintiffs inadvertently failed to plead some necessary facts about sale-deeds executed in favour of defendant no.17 and 18. Therefore it is necessary to amend the plaint so as to add necessary pleading about the same. The amendment will not change the nature of the suit. The amendment if allowed, will help to serve the interest of justice. On these grounds plaintiffs have prayed for grant of the application.

FACTS IN THE SAY

3. Defendant nos.17 and 18 have filed their say and denied all the material averments in the application. They submitted that, plaintiffs have earlier opportunity to amend the suit. They are purposely delaying the suit. There is no bonafides in the application. For all these reasons, application is liable to be rejected.

POINTS AND FINDINGS

4. Upon perusing application and say the following points arise for my consideration and I record my findings thereon as under for the reasons to follow:

<u>POINTS</u>	<u>FINDINGS.</u>
1. Can the amendment be allowed, as prayed for?	Allowed.
2. What order?	As per final order.

REASONS AS TO POINT NO.1

5. The purpose and object of Order VI Rule 17, C.P.C is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. Mere delay cannot be a ground to reject the amendment. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interest of justice and the liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. It is also well settled that even amendments modifying the original cause of action or adding another may be allowed if the entire subject-matter of the suit is not altered. Introduction of a new cause is no ground for refusing to allow amendment so long as the defendant has the opportunity of meeting the new case by amendment of the written statement and by leading evidence in respect of his defence. Avoidance of multiplicity of suits is also one of the relevant considerations.

6. Plaintiffs have filed this suit for declaration and injunction. The proposed amendment is sought for make pleading about the sale-deeds executed in favour of defendant no.17 and 18. If the application is allowed, it will not change nature of the suit. Moreover, it will avoid multiplicity of the proceeding. Therefore, relying on the principles discussed supra I am granting this application.

7. However, plaintiffs are seeking amendment after 8 years from adding defendant nos.17 and 18 in the suit. There is no reasonable explanation given by plaintiffs in their application as to why they waited for such a long period to file this application. The suit lingered because of this application. Therefore, defendants needs to be compensated by awarding suitable costs which I assess at Rs.3500/- and accordingly answer point in the affirmative and proceed to pass the following order.

ORDER

1. The application Exh. 292 is granted subject to costs of Rs.3500/- to be deposited on or before 17/10/2018; failing which the application shall stand rejected, automatically.
2. Defendant nos.17 and 18 are entitled to receive costs.
3. Plaintiffs are directed to carry out the amendment immediately after depositing the costs and before 17/10/2018. Plaintiffs are directed to supply copies of amended plaint, failing which the application granting amendment shall stand rejected and if amendment carried out, will be struck out automatically.

Phaltan
Date : 12.10.2018

(S. M. Bohara,)
Jt. Civil Judge Jr. Dn. & J.M.F.C.
Phaltan.