

ORDER BELOW EXH.78 IN R.C.S. NO. 27 OF 2017

(Mangal Uttam Mulik and ors. Vs. Indubai Subhash
Nanavare and ors.)

The plaintiffs have moved the present application for amendment of pleadings under Order VI Rule 17 of Code of Civil Procedure 1908.

2. They have contended that, present suit is filed for partition and inadvertently some necessary parties and joint family properties for want of information at the time of filing suit are been left out. It is further contended that the proposed defendant and the property is necessary to be impleaded. It is also contended that the proposed amendment will not change nature of suit and there will be no prejudice to the defendant. Considering all above aspects plaintiffs prayed to allow the application.

3. The defendants have filed say below Exh.80 and denied the entire contentions of application. Per contra contended that application is illegal, no proper court fee is paid. Further there is bar of proviso of Order 6 Rule 17 of C.P.C. It is further contended that the defendants by way of their W.S. dated 22/08/2017 have specifically pleaded regarding non joinder of property and the plaintiffs since then are aware but they have not done the needful. It is further contended that in the present suit plaintiffs have adduced their entire oral evidence and after that they have moved the present application. In present matter issues

are framed below Exh.65 where in specific issue as regards non joinder of necessary party and property is framed at serial no. 05 and 06 and the plaintiffs were very well aware about said issues but still they have not done needful within time. Considering all above aspects defendants prayed for rejection of application.

4. Considering the above said rival contentions of the parties following points arise for my consideration.

Sr. No.	Points	Findings
1.	Whether proposed amendment is necessary for the purpose of determining the real question in controversy between the parties ?	... Yes
2.	What order ?	... As per final order.

5. Perused the record. Heard the learned advocate for the parties. The learned advocate for the plaintiff has submitted that suit is for partition and the necessary party and the property has to be impleaded in the suit. He has also submitted that the proposed amendment will not change nature of suit and there will be no loss to the defendants. He has relied upon the following rulings-

1. Surendra Kumar Varma Vs. Makhhan Singh (AIR 2009 SC (Supp.)2671).
2. Baburao Sahebrao Deshmukh Vs. Maharashtra Insecticides Ltd. (2003 CJ (Bom.)121).

3. Basavanappa Bhimsha Koli @ Jamdar Vs. Sunil Basavanappa Jidge (2007 CJ Bom 187).
4. Gurubas sing Vs. Buta Sing (AIR 2018 SC 2635)
5. Mohinder Kumar Mehara Vs. Ruprani Mehara (AIR 2017 SC 5822)
6. Abdul Rehman and anr. Vs. Mohd. Ruldu and ors. (AIR 2012 SCW 5419)
7. M/s Chakreshwari Construction Private Ltd. Vs. Manoharlal (AIR 2018 SC Supp. 475)

Consideration all above aspects he prayed to allow the application.

6. Per contra the learned advocate for the defendant has submitted that the application is barred as per the proviso of Order 6 Rule 17 C.P.C. He has further submitted that the defendants in their written statement have specifically taken a plea regarding non joinder of necessary party and property. Thereafter, issues as regards these aspects are framed, the plaintiff has adduced evidence, the plaintiff and witnesses are been cross-examined and thereafter present application is belatedly moved. He has relied upon following rulings-

1. M/s Revajeetu Builders and Developers Vs. M/s Narayana Swami and sons and ors. (2009 AIR SCW 6644)
2. Eknath Nivrutti Hegadkar through Lrs. Vs. Aagatrao Dnanu Ghodake through Lrs. (2022 (1) Mh.LJ. 319)
3. Smt. Kamla Devi Udasi (dead) Vs. Satya Prakash Kapoor and ors. (AIR Online 2022 MP 314)

Considering all above aspects he prayed for rejection of application.

7. I have gone through entire record. It reveals that initially Mangal Uttamrao Mulik has filed suit against defendant no.01 to 06 for partition. Record shows that during the pendency of the suit plaintiff died and her legal heirs were impleaded in the suit. It is the contention of plaintiff that she, defendant no.06 and deceased Subhash, deceased Sopan are the legal heirs of Shankar. In the present matter from the record it is reveals that the defendant no.01 to 05 appeared but failed to file their written statement and accordingly on 05/05/2017 No W.S. order was passed. Thereafter, as per order below Exh.33 No W.S. order was set aside. Further the order passed by my learned predecessor below Exh. 01 dated 31/01/2020 shows that the defendants as per order passed below Exh. 33 has not done the needful and said order was vacated.

8. In the present matter the record further shows that the defendant no.02 and 03 vide Exh.61 on 03/04/2023 has moved and application to set aside the order dated 31/01/2020. The application Exh. 61 was allowed and thereafter the written statement filed by defendant no.01 to 05 along with Exh. 33 was been read and recorded only to the extent of defendant no. 02 and 03. The said W.S. is at Exh.85.

9. The written statement Exh.85 which was filed along with Exh. 33 on 23/08/2017 is admittedly taken on record on 29/11/2023. In said written statement the defendants have

specifically pleaded regarding non joinder of necessary parties also they have taken a plea that all the properties are not brought in a common hotchpot. In present matter from the record it reveals that issues are framed on 29/11/2023 and thereafter plaintiff Uttam Maruti Mulik has adduced his evidence, he is cross-examined by the defendants. Further record shows that thereafter plaintiffs have examined two witnesses who were also cross-examined by the defendants and then the present application is moved. So from the record it is evident that the present application is moved after commencement of hearing.

10. The present suit is filed for partition. The plaintiffs by way of present application are intending to implead the proposed defendant and the land Gat no.291. I have gone through the case laws relied by the learned advocate for the plaintiffs. In the case of Surendra Kumar Sharma (supra) it is observed that *delay not by itself sufficient ground to reject amendment. Court has to see whether by allowing belated amendment, real controversy between the parties may be resorted. Whether opposite party can be compensated by the costs.*

11. I have also gone through the ruling cited by learned advocate for defendants. In the case of M/s Revajeetu Builders and Developers (supra) it is observed that *plaintiff seeking permission, trying to introduce new case, proposed amendment if allowed would affect right of respondents adversely.* In said ruling the Hon'ble Apex Court has given some Illustrative

principles which shall be taken in to consideration at the time of deciding the amendment application. Further in the ruling of M/s Chakreshwari Construction (supra) relied by learned advocate for the plaintiff the principles laid down in the case of Revajeetu Builders (supra) are been reiterated. The principles are as follows-

1. Whether the amendment sought is imperative for proper and effective adjudication of the case;
2. Whether the application for amendment is bona fide or mala fide;
3. The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
4. Refusing amendment would in fact lead to injustice or lead to multiple litigation;
5. Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and
6. as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

12. In present matter from the record it is evident that suit is for partition and issues are framed vide Exh.65 and issue regarding non joinder of necessary parties and necessary properties are been framed. Though its true that the plaintiffs though within the knowledge regarding plea of non joinder of

necessary parties and properties have not done the needful. Further after the issues plaintiffs have adduced evidence and then moved the application. So from the record it is apparent that plaintiffs have belatedly moved the application. Plaintiffs have contended that inadvertently necessary party and property is been left out. Merely the delay will not be a ground for rejection of application and it has to be seen that whether proposed amendment is necessary to decide the real controversy between the parties. It is settled that the aspects regarding non joinder of necessary parties, properties is a technical error and it can be rectified. The present suit is for partition and the plaintiffs by way of present application are intending to implead proposed defendant no.07 and the land Gat no.291. If said application is allowed then there will be no prejudice to the defendants, the suit is for partition and there will be no change in nature of the suit. Further if the application is rejection then there will be multiplicity of litigation. Furthermore the defendants can be very well compensated for the delay by imposing cost upon the plaintiffs.

13. So considering the nature of the dispute in my opinion the proposed amendment is necessary for the purpose of determining real controversy between the parties. Hence, I answer point no.1 in the affirmative. Considering all above aspects I proceed to pass the following order.

ORDER

1. Application is allowed subject to costs of Rs.1000/- payable to the defendant no.02 and 03.
2. Plaintiffs are directed to carry out necessary amendment and file amended copy of plaint within stipulated period.

Phaltan

Date:- 02/07/2025

(V. S. Wagh)

Jt. Civil Judge, Jr. Division,
Phaltan, Dist. Satara.