

Order below Exh. 45 in R. C. S. No. : 17/2014.

1. Perused application, say of defendant No. 1 to 4 filed at Exh. 47. Heard Ld. Adv. U. H. Sanas for the plaintiff and Ld. Adv. S. P. Deshmukh for defendant No. 1 to 4.

2. The plaintiff has filed this application under Order VI Rule 17 of Code of Civil Procedure and prayed for permission to amend the plaint. It is contended by the plaintiff that by filing Written Statement at Exh. 20 and 30, defendant No. 1 to 4 have made false pleading about partition in respect of the suit property and denied the averment made by the plaintiff in the suit. According to the plaintiff that in view of false pleading made by defendant No. 1 to 4, he want to incorporate proposed amendment in the plaint. He contended that necessary amendment is required in respect of valuation of the suit property and relief in respect of the suit property. He further contended that proposed amendment which is specifically mentioned in this application is formal in nature. If this application is granted then it will not change very original nature of the suit and it will not affect the defence of defendant. Therefore, the plaintiff has prayed for permission to amend the plaint.

3. Defendant No. 1 to 4 have filed their say at Exh. 47 and resisted this application. It is contended that this application is not filed as per factual position of the suit property. It is further

contended that report of court commission is against the plaintiff and therefore this false application is filed with view to prolong the matter. It is further contended that if this application is granted then certainly original nature of the suit will be changed. Therefore defendants prayed for rejection of this application.

4. After hearing both side, I have gone through pleadings of the party. I have perused documents filed on record. It is pertinent to note that defendant No. 1, 2 and 4 have filed their Written Statement on 05.02.2014 at Exh. 20 and defendant No. 3 has filed Written Statement on 26.03.2014 at Exh. 30. Thereafter on 04.01.2019 issues are framed at Exh. 44 and thereafter on 04.06.2019, this application is came to be filed by the plaintiff. Proviso of Order 6, Rule 17 of C.P.C. state that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. In the suit in hand on 04.01.2019, issues are framed and trial was commenced thereafter. This application is filed after commencement of trial.

5. On perusal of this application, it appears that, as per contention of the plaintiff that due to the false pleading made by defendants, he constrained to file this application. In present application the plaintiff has not clarified that, why he has not raised his contention before framing of issues. He has not

satisfactorily explained the reason for filing this application at belated stage. In this technical/legal ground, this application is liable to be rejected. Reason is that the plaintiff has failed to compliance of proviso of Order 6, Rule 17 of CPC. Therefore, I pass the following order.

:: ORDER ::

Application is rejected.

Date : 17.08.2019.

(V. N. Girwalkar)
Civil Judge Junior Division, Wai.