

<p>MHST160003572022</p> 	<p style="text-align: center;"><u>Order Below Exh. 28 in</u> <u>R.C.S. No. 40/2022</u> <u>(Shri.Shankar Keshav Rajapure Through Power of attorney Jaywant Mahadev Rajapure)</u> <u>V/s.</u> <u>Shri.Ramesh Piraji Jamdade & Ors.)</u> <u>(Order passed on 23.09.2024)</u></p>
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This is an application filed by the plaintiff under Order VI Rule 17 of the Code of Civil Procedure 1908.

2. Through this application plaintiff submitted that this is the suit for recovery of possession of Rs. 65,000/- from defendant. But there is recovery of money of Rs. 60,000/-. At the time of institution of suit, plaintiff has inadvertently mentioned recovery of money of Rs. 60,000/-. Hence, plaintiff prayed to amend the plaint in that regard. It is necessary for proper adjudication of the suit. If the amendment is allowed then defendant has no harm. The nature of suit will not be changed due to this amendment. Hence, the application be allowed.

3. Per contra defendants have filed their say at Exh.30 and resisted the contentions of application. They submitted that original suit was filed as RCS No.199/2009. Said suit was decided on merit on 07.03.2015. Plaintiff in this suit had filed an appeal as RCA No. 4/2015. The decision is against plaintiff.

4. Defendants further submitted that they have filed their written statement at Exh.24. The Court has framed issues. Issue no.1 is related to amount of Rs.60,000/-. Therefore, said application is

pointless. It is illegal. The nature of suit will be changed. Hence, application deserves to be rejected.

5. The points of determination along with my findings thereon with reasons are as under:

Points of Determination	Finding
1. Whether application of plaintiff for amendment of the plaint deserves to be allowed?	No.
2. What order?	Application is rejected.

REASONS

Point No.1:

6. Ld. Advocate of plaintiff in his argument submitted that it is necessary to amend the plaint. Plaintiff gave the description of suit property. Through this amendment, clarification came on record.

7. Ld. Advocate of defendant submitted that it is abusing the process of law. There is change in the nature of suit by this amendment. It will prejudice to the defence of defendant.

8. On perusal of record of the case, it seems that this is the suit for recovery of amount of Rs.65,000/- from the year 1992 till receipt of said amount. Plaintiff did not file documents regarding it.

9. According to order 6 rule 17 of the Code of Civil Procedure 1908, the Court can amend the pleadings at any stage of the suit if that amendment is necessary to decide the real question in

controversy between the parties. The proviso to the said rule provides that where the hearing of the suit has been started, in that situation the amendment of the pleadings shall not be granted unless exceptional circumstances are shown or it was shown that in spite of due diligences the party could not have filed the application for the amendment. In this case, the issues are framed at Exh.21.

10. It seems that if the amendment of pleading is allowed then there is effective adjudication of all controversial issues in the trial of same litigation. But plaintiff failed to file documents showing amount of Rs. 60000/-. Therefore, I answer point no. 1 is in negative.

Point No.2:

11. In order to give answer of point no.2, I pass following order:

ORDER

1. The application is rejected.
2. Cost in cause.

Date: 23.09.2024

Place: Wai

(Smruti S. Palsule)

3rd Jt. Civil Judge Jr. Dn.Wai.