

**R.C.S. No.285/2017
Bajrang & Ors. Vs.
Anandrao & Ors.**

ORDER BELOW EXH.22.

This is an application under Order VI rule 17 of the Code of Civil Procedure to make amendment in the plaint. I read an application and the reply of defendant filed at Exh. 25. Perused the record. Heard the learned counsel for plaintiffs Adv. Shri. M.S. Budhawale. and the learned counsel for defendants Adv. Shri.P.D. Sawant

2. Plaintiffs filed this instant application and submitted that, plaintiffs filed this suit against all defendants for the partition and separate possession of the suit property i.e. agricultural land bearing field S.No.1386 situated at Kaledhon, Tal Khatav. Dist. Satara. Thereafter, the defendant No.1 filed the W.S. at Exh. 18. This suit is proceeded ex-parte against defendant No.3 and 4 vide order below Exh.1 dtd.11.1.2018. This suit is also proceeded without W.S. of defendant No.2 vide order below Exh. 1 dated 05.03.2018. Thereafter, on 14.12.2019, issues have been framed at Exh. 21 and the suit was fixed for the evidence of the plaintiff. Subsequently, plaintiffs filed this application and sought amendment in the plaint. According to plaintiffs, they sought partition of agricultural land bearing field S.No.1386. However, plaintiffs want to add another agricultural land i.e. field S.No.1387. They also want to add para 2A that , 'the defendant No.1 compelled to prepare false mutation Entry No.699 and prepared false record.' The amendment which is claimed by plaintiffs are

essential to adjudicate the suit on merit and therefore, prayed to grant permission to make amendment in the plaint.

3. On the contrary, defendants opposed to this application by filing reply at Exh. 25 and submitted that plaintiffs could not add additional landed property in the present suit. The nature of the suit will be changed, if the amendment application is allowed. Therefore, defendants prayed to reject the application.

4. On perusal of record, it appears that after filing W.S. of defendant No.1 at Exh. 18, my learned predecessor framed issues on 24.12.2019 which is at Exh. 21. However, plaintiffs have not filed any affidavit of any witness as of examination-in-chief. The trial of the suit is not commenced till today. Plaintiffs filed this application before commencement of trial. Moreover, plaintiffs are not intending to claim any other relief except the partition and separate possession of the suit property and perpetual injunction. Plaintiffs only want to add agricultural land bearing field S.No.1387 as of suit property along with earlier field S.No.1386. Plaintiffs also want to add that the Mutation Entry No.699 is false. Under these circumstances, it appears that the nature of the suit will not be changed, if the application is allowed. No prejudice will be caused to defendants, if plaintiff is permitted to make amendment in the plaint. I found substance in the application. However, it is necessary to mention here that plaintiffs filed this

application on 24.12.2019. Plaintiffs filed this suit in the year 2017. Therefore, it appears that plaintiffs filed the amendment application after near about 2 years from the date of filing of this suit. Plaintiffs have not mentioned anything as to why they filed this application after 2 years from filing this suit. Therefore, plaintiffs are liable to pay cost to defendants. Therefore, I passed the following order.

ORDER

1. The application is allowed.
2. Plaintiffs are permitted to make amendment in the plaint as claimed till next date subject to cost of Rs.1000/- payable by plaintiffs to defendants, otherwise this application shall automatically stands rejected.
3. Plaintiffs are further directed to file amended copy of plaint till next date.
4. Both the parties are directed to take note of it.

Vaduj
Date: 25.01.2023

(D.D. Fulzele)
Civil Judge Sr.Dn., Vaduj