

R.C.S.No 06/2018  
Indubai +3 Vs Waman+1  
CNR No. MHWR040000762018

**ORDER BELOW EXH. 31**  
(Passed on 12/06/2019)

1. The plaintiffs filed this application under order VI Rule 17 of C.P.C. for amendment in the plaint. The plaintiffs' submitted that their suit is for partition and separate possession of 3/5<sup>th</sup> share in their ancestral field property in F.S. No. 101/1 and 101/2 at Mouza Pimpalshenda. The defendant nos.1 and 2 are denying the plaintiffs' right in the suit property. They keeping the plaintiffs in dark executed the agreement to sale in favour of Mr. Nikhil Bhujang Nartam resident of Wadgaon and Sau. Nanda Arvind Kawale resident of Ramna, Taluka Seloo. Therefore, the plaintiffs require declaration and cancellation of such document. The plaintiffs also require to add the alleged party to the documents as defendant nos. 3 and 4. The plaintiffs by proposed amendment want to add para no. 2-A and 2-B after para 2. In para 2-A, the plaintiffs proposed to plead the nature of property as ancestral property of plaintiffs and present defendants. In para 2-B, the plaintiffs are claiming for declaration of agreement to sale with purchaser as illegal, not binding and therefore be canceled. The plaintiffs want to delete original para no.6 in the plaint and want to insert para no.6 in the plaint narrating defendant nos. 1 and 2 have intentionally and deliberately mislead the plaintiffs about their right in the ancestral property.....therefore, the act of defendants are illegal, bogus and not binding on the plaintiffs.

2. The plaintiffs want to insert prayer clause i(a) after prayer no.1 praying cancellation of agreement to sale in favour of proposed

defendant nos. 3 and 4 vide document no. 1772 dated 03.11.2017 and 2032 dated 13.12.2017.

3. The defendants filed reply at Exh.33 and denied any sale-deed in favour of defendant nos. 3 and 4 and prayed to reject the application.

4. Heard both the learned advocates. They argued to the tune of their application and reply. Learned advocate for plaintiffs argued that the plaint is originally drafted by some other advocate and now he is appearing for the plaintiffs. On the other hand, learned advocate for defendant nos. 1 and 2 argued that the defendants have raised the objection in their written statements over the tenability of suit on the ground of non-joinder of necessary parties. The plaintiffs had knowledge of such agreement even at the time of filing of the suit. But the plaintiffs did not plead the same in their plaint. Now the suit is fixed for hearing over Exh.5. The plaintiffs could incorporate such pleading even in the original plaint and could file the application at earlier stage but no reason is explained for such failure. Therefore, now the application at such delayed stage is not tenable and be rejected.

5. The plaintiffs filed pursis at Exh.34 and requested to read the word 'sale-deed' as 'agreement to sale'. Perused application and plaint. The proposed amendment in para no.2-A is in respect of transaction dated 18.06.1989. There is no whisper regarding such transaction in the original plaint. Survey no. 107 as mentioned in the application in proposed para no.2-A is never mentioned in the plaint. The proposed amendment in para no.2-A is appeared more in nature of evidence than the facts which are not strictly required to be pleaded.

Survey No. 107 is not in the suit properties in the present suit, hence it is not require to incorporate the proposed amendment in para no.2-A.

6. The plaintiffs want to replace para no.6 and want to insert that the defendant nos. 1 and 2 have intentionally and deliberately mis-lead the plaintiffs about their rights in ancestral property even after death of their mother. However, such amendment is appeared against the legal provision, it is pertinent note that knowledge, ignorance, misleading of legal provision is no excuse in the eyes of law and therefore, the proposed amendment in para no.6 is not appeared necessary.

7. In para no.2-B the plaintiffs stated about the transaction by the plaintiffs with the proposed defendant nos. 2 and 3 vide document nos.1772/2017 and 2032/2017. Such documents are agreement to sale and not the sale-deed. The plaintiffs by pursis requested to consider the word 'sale-deed' as 'agreement to sale' while deciding the application. It appears that the plaintiffs have knowledge about such agreement to sale even at the time of filing of the suit. The change in advocate cannot be ground for amendment in the plaint. The alleged agreement is appeared to be of the year 2017. The suit is filed after such agreement. It also appears that the plaintiffs had knowledge of such transaction. No sufficient reason is mentioned in the application for not mentioning of such transactions in the original plaint. However, in the present suit the rights of defendant nos. 3 and 4 are going to be affected and those are appeared necessary parties to the suit. Their presence is also appeared necessary to avoid multiplicity of the litigation. However, the plaintiffs could have plead the same in the original plaint or they could have file such application even at earlier

stage but no sufficient reason is brought on record for such failure. Hence, considering the want of diligence on the part of plaintiffs, it will be appropriate to allow the application with costs to be paid to the contesting defendants and proposed defendants equally. Hence, I pass the following order;

**ORDER**

1. Application is partly allowed with costs of Rs.200/- to be paid to existing and proposed defendants each.
2. Application is allowed to the extent of claim clause "*Declaration, Cancellation*", proposed *defendant nos. 3 and 4 along with names*, para no.2-B, prayer *ia* in prayer clause after prayer no.1.
3. The proposed amendment be carried out within 14 days from the date of this order.

Date :12/06/2019

( A. G. Mhaskey )  
Civil Judge, Junior Division,  
Seloo

**Certificate**

I affirm that, the contents of this PDF are same words for words,  
as per the original order .

Name of Stenographer : S.V. Made

Name of Court : C.J.J.D. & J.M.F.C., Seloo.

Upload on date : 13.06.2019