

R.C.A. No.6/2022
Parashram & Ors Vs. Malanbai & Ors
CNR NO.MHWS010000372022

ORDER BELOW EXH.17.

Appellant has filed this application under Order 6 Rule 17 r/w. section 151 of Civil Procedure Code for amendment in the plaint.

2. Appellant submitted that they have filed R.C.S. No.75/2014 before the trial Court for simplicier suit for permanent injunction and restraining the defendants from alienating suit field and against all the defendants restraining them from disturbing peaceful possession of the plaintiff over the suit field. All the sale deed were in the name of defendant No.1 who is legally wedded wife of plaintiff No.1. Trial Court failed to appreciate the legal position of law and wrongly failed to observed plaintiff's claim the relief of declaration and on that ground suit was dismissed. Therefore, plaintiff submitted that the name of plaintiff No.4 to 7 be added in the property and in the prayer of clause. He want to add the prayer and declaration by partition and separate possession. He also want to add the other property and alternative prayer and several prayer cause in the suit. Therefore, submitted that proposed amendment will not change the nature of suit and prayed to allow the application.

3. Respondent State party have filed the say and submitted to pass the suitable order.

4. Respondent No.1. has filed say at Exh.35 and submitted that the reason mentioned by the appellant is not proper. This amendment is against the amendment of law. It is time barred. Therefore, prayed to reject the application.

5. Respondent Nos.3,4 and 5 have filed their say at Exh.26 and submitted that the relief of declaration is time barred and it is liable to be rejected. Therefore, prayed to reject the application.

6. Heard the advocate for both the parties.

7. Considering the record and submissions following points arose for my determination and I have recorded findings for the reasons followed thereafter :

<u>POINTS</u>		<u>FINDINGS</u>
1]	Whether the amendment is necessary ?	No.
2]	Whether the nature of suit will be change after amendment ?	Yes.
3]	What order ?	As per final order.

REASONS

AS TO POINT NOS.1 TO 2 :

8. Advocate for the appellant has relied upon the case law **AIR 1995 SC 1768, K. Raheja Constructions Ltd. Vs. Alliance Ministries Ors.** After perusing the said case law then it is found that here is no where mentioned that the amendment can be allowed at the appellate stage. No where it is mentioned that amendment can be allowed though nature of suit will be changed. Therefore, this case law is not applicable in this case.

9. Advocate for the appellant has relied upon the case law **AIR 2008 SC 2171, Ashutosh Chaturvedi Vs. Prano Devi & Ors.** After perusing the said case law nothing is observed regarding amendment can be allowed when nature of suit will be changed. Therefore, this case law is not applicable in this case.

10. Advocate for the appellant has relied upon the case law 1996 DGLS (SC) 622, Vijendra Kumar Goel Vs. Kusum Bhuwania. In the said case law also no where it is mentioned that amendment can be allowed though nature of suit will be changed. Therefore, this case law is not applicable in this case.

11. Advocate for the appellant has also relied upon the case laws 1996 DGLS (SC) 130, Radhika Devi Vs. Bajrangi Singh, AIR 1988 (SC) 1362, Jagan Nath(Deceased) through, LRs Vs. Chander Bahn & Ors., 2024(2) ALL MR 417, Shri. Rajaninath Shrikant Shirodkar Vs. Shree Kamakshi Saunsthan and 2019(3) ALL MR 475(SC) Mehboob-Ur-Rehman (D) Through LRs. Vs. Ahsanul Ghani. After perusing all these case laws it is found that no where it is mentioned though the nature of suit will be changed then amendment can be allowed.

12. Considering all above reasons I come to the conclusion that considering the nature of amendment it is found that if amendment is allowed, nature of suit will be changed. As such said application can not be granted. Therefore, findings for point Nos.1 and 2 are accordingly. Hence, I pass following order.

ORDER

Application is hereby rejected.

Washim.
Date : 02/01/2025.

(S.S.Ghorpade)
Ad-hoc District Judge-2,
Washim.

CERTIFICATE

I affirm that the contents of this P.D.F. file Order are same, word to word, as per the original Order

Name of the Stenographer :	S. V. Dere, Stenographer (Gr.III)
Name of the Court :	Shri. S S.Ghorpade Ad-hoc District Judge-2, Washim.
Date :	02/01/2025
Order signed by the presiding officer on :	02/01/2025
Order uploaded on :	17/01/2025