



ORDER BELOW EXH- 12

1. This is the application under order 6 Rule 17 read with Section 151 of Code of Civil Procedure.
2. Read the application. Perused the say. Heard the learned advocates.
3. The plaintiff submits that they have filed suit for partition and separate possession on 6-6-19. The defendant Nos. 1, 5 and 6 appeared before the Court. While defendant No. 2 has not appeared in the matter. In the service report Bailiff stated that Shivnanda Shankar Khanzode is not a proper name, it is a Shivnanda Ganesh Khanzode. Therefore, name of husband of defendant No. 2 is necessary to amend.
4. The plaintiff further contends that it came to her knowledge that part of suit land is alienated to Fulsing Hasu Rathod, therefore said transaction and sale deed is not binding upon their rights. Hence, she want to amend plaint by adding paragraph No. 4-A.
5. The plaintiff further contends that proposed amendment is

necessary to resolve the controversy between parties. If amendment is not allowed, it will cause irreparable loss to them. She prays to allow the application.

6. The defendant Nos. 1, 5 and 6 have opposed the application. Heard the learned advocates.

7. Perused the record. The perusal of bailiff report shows that there is variance in the name of defendant No. 2 as per her say at the time of effecting service of summons on her. The perusal of plaint shows that suit property Gut No. 222 is situated at Ghota. According to plaintiff, its part is alienated in the name of Fulsing Hasan Rathod, r/o Sarali. Hence, in that context plaintiff wants to amend the plaint.

8. The object of order VI Rule 17 is to minimize the litigation, minimize the delay and to avoid multiplicity of suits. Therefore, it has been included to do justice and not to shut out doors of justice merely on technicalities. The cardinal test for deciding an application for amendment is to be considered as points for determination as under:-

Sr. No.	Points	Findings
1.	Whether the amendment is necessary for the determination of the real question in controversy?	Yes.

2.	Whether the amendment be allowed without injustice to other side?	Yes.
3.	What Order?	Application is allowed.

REASONS

As to point Nos. 1 and 2:

9. The purpose and object of the rules of pleadings is to decide the real controversy between both the parties and not to punish them for their mistake, negligence or short comings. Also, if the proposed amendment is necessary to promote the ends of justice and not to defeat them, then Court must be liberal to allow the application. The exercise of discretionary power must be governed by judicial considerations and the wider the discretion, the greater care and circumspection. The rule of amendment is essentially a rule of justice, equity and good conscience.

10. The power of amendment should be exercised in the larger interest of doing full and complete justice to the parties. The amendment can be allowed to avoid multiplicity of the proceeding taking notice and subsequent events, to clarify the pleading and if there is bonafide omission in making the necessary averments in the plaint.

11. From record, i.e. bailiff report (Ex.16) it is crystal clear that defendant No.2 has stated about variance in name. Futhermore, the plaintiff contends that defendant no 1 has illegally sold part of suit property. The

defendants have opposed the application, however not denied alienation of suit property.

12. No prejudice will be caused to defendants by adding proper and necessary parties to the suit and amending plaint regarding alienation of the part of suit property. Hence, I record my findings to point No. 1 and 2 in the affirmative. Therefore, it will be just and proper to allow the application. In view of supra observations, I pass the following order:-

Order

1. Application stands allowed.
2. The plaintiff to carry out proposed amendment within 14 days.

Sd/-

Date: 03/09/2021

(Smt. B. K. Patil)
Jt. Civil Judge, (Jr. Div.),
Washim.

C E R T I F I C A T E

I affirm that the contents of this PDF file Judgment/ Orders are same word for word as per original Judgment/ Order.

Name of the Presiding Officer	: T. R. Ugale
Court Name	: Jt. C.J.J.D. & J.M.F.C., No.1, Washim.
Date	: 03/09/2021
Judgment/Order signed by Presiding Officer	: 06/09/2021
Judgment/Order Uploaded on	: 06/09/2021