

ORDER BELOW EXH. 36 IN R.C.S.No. 26/2017
(Shaikh Kattu Vrs. Shaikh Abdul)

1. The present application is filed by plaintiff for seeking amendment in plaint as per Order 6 Rule 17, Order 1 Rule 10 section 151 of CPC.

2. It is averred in application that, plaintiff filed present suit for declaration of ownership and perpetual injunction, the defendant appeared and filed their written statement during pendency of the suit. Defendant no. 2 and 3 sold out 3 H 20 R land in block no.99/1 and 0 H 42 R in block no.77/2 vide sale deed bearing no. 568/2020 on 19.03.2020 to one Tukaram Sakharam Ippar. The present sale deed executed with intent to deprive the right of present plaintiff. The said transaction is illegal. The defendant no. 1 and 2 are not owner and possessor of the abovesaid suit land. The sale deed executed by showing false boundaries and it is a bogus. Further, the plaintiff prepared appeal against the Ferfar no.1012 before the Sub Divisional Officer and it is pending. Thereafter, the defendant no. 1 and 2 executed *Chukdurustilekh* Sale deed no. 623/2020 on 30.04.2020. The plaintiff filed a Civil Suit bearing no. 81/2020 before the Civil Judge Sr. Division, Washim against defendant and it is pending. The defendant no. 1 and 2 executed bogus sale deed bearing no. 1634/2020 on 02.09.2020 in respect 1 acre land in block no.77/2. False boundaries are shown in said sale deed.

3. The sale deed bearing no.668/2020, 636/2020 and 1634/2020 are not binding upon plaintiff. The Tukaram Sakharam Ippar is wellknown about suit properties because he is serving as Circle Inspector, he also mutated entries in respect of land in block 99/1. He

also knowledge about the pending of suit. In the circumstances the plaintiff wants to add said Tukaram Sakharam Ippar as proposed defendant no.3 in suit as well as to introduce some pleading/facts in respect of abovesaid transaction therefore, he prayed for permission is required to amendment in suit title as well as in plaint.

4. The defendant opposed the application and contended that the proposed amendment will change the nature of suit and it is belated therefore it is liable to be rejected and if it is allowed then cost be imposed.

5. Heard both sides. They argued in the line of their respective pleadings.

6. Considering the rival contentions, following points arised for my determination and I have recorded my findings thereon with the reasons stated thereon.

Sr.No.	Points	Findings
1)	Whether plaintiff is entitled to amend his plaint as prayed ?	Yes.
2)	What order ?	As per final order.

REASONS

As to Point No. 1 -

7. Before discussing the rival contentions, it is necessary to see the *Order VI Rule 17 of the Code of Civil Procedure*, reads as under

“ The court may at any stage of proceeding allow either party to alter or amend his pleadings in such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy

between the parties. Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

8. The rule 17 divides into two parts. First part gives discretion to the court to allow amendments which shall be necessary for the purpose of determining real question in controversy between the parties. The proviso appended to the order gives no discretion to the court but it gives a rider that after commencement of trial, unless due diligence is shown, court cannot allow any amendment.

9. Before proceeding further it would be just and proper to look into record and proceeding. Perusal record it reveals that, present suit is filed by plaintiff for declaration of ownership as well as perpetual injunction. The defendants filed written statement cum say at Exh.11 to the suit. After framing of issues matter is kept for adduce evidence of plaintiff and in this juncture the present application has been moved.

10. The present application is supported by affidavit of plaintiff. The plaintiff wants to add in title clause, in court fee clause as well as in para no. 5, 6, 11 and in prayer clause shown in application. The proposed amendment is clarifactory and explanatory in nature and plaintiff wants to add some additional plea which is happened after institution of suit. The suit is instituted in 2017 and the alleged transaction happened during the pendency of the suit. So the proposed amendment will not change the nature of the suit.

11. Further, the plaintiff filed copy of the sale deed and *chukdurustilekh* has been executed in 2020, it appears that, thereafter

present application instantly moved. So for no delay has been caused. Furthermore, considering situation of Covid-19 it is not proper to impose heavy cost to the plaintiff.

12. In my view, the amendment becomes necessary to avoid multiplicity of the suit. Because if the amendment is not allowed, it will give rise to another suit or litigation. The defendant has opportunity to file his additional plea or defence after proposed amendment. Therefore, the application needs to be allowed. Hence following order.

ORDER

1. The application is hereby allowed subject to costs of Rs.300/- (Rs.three hundred only) to pay to defendants today or till next date.
2. The plaintiff is permitted to carry out proposed amendment within stipulated time.
3. The plaintiff is directed to supply copy of amended written statement for the Court and to the defendants.
4. Costs of this application on plaintiff.

Date :-22.09.2021

Sd/-
(S.N.Gavali)
Jt. Civil Judge Junior Division, Risod

Certificate

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

Name of Stenographer	:- C R Gadge
Court	:- Jt.CivilCourt,J.D.,Riso
Date:-	:- 22.09.2021
Judgment/Order signed by the Presiding Officer	:- 22.09.2021
Judgment/Order uploaded on	:- 05.10.2021