

R.C.S.80/2021  
Santosh Vs..Maroti

### **ORDER BELOW EXH. 18**

With instant application vide Order 6 Rule 17 of the Civil Procedure Code, plaintiff seeks amendment in plaint and Exh.5.

2. According to plaintiff, during the pendency of the suit the new facts are happened and it is necessary to brought on record. Therefore, he wants to add para no. 2-A after para 2 in the plaint and Exh. 5 which is mentioned in application.

3. Defendant contended that, the proposed amendment is against the constitutional provisions. Therefore, matter to be dismissed with cost.

4. Heard Ld., advocate of both sides. Perused record.

5. Point for determination alongwith finding and reason is as below :-

<b><u>Sr.No.</u></b>	<b><u>Point</u></b>	<b><u>Finding</u></b>
1	Whether proposed amendment will change nature of suit?	Negative.
2	Whether proposed amendment is essential for final adjudication of the dispute in the parties?	Affirmative.
3	What order?	Application is allowed.

## REASON

6. Learned advocate for plaintiff relied on Judgment of Hon'ble Bombay High Court Bench Goa in ASHOK TEOFILO VAZ Versus STATE OF GOA (2014 (1) BCJ 508), therein observed that, Civil procedure code, 1908, Order 6, Rule 17- amendment of plaint can be allowed at any stage of proceedings, subject to such terms and conditions as may be put by the Court-Amendment of pleadings, as by the petitioners, is necessary to determine the real controversy in and could not have been effected earlier, despite due diligence-it is covered by proviso.

7. Learned advocate for defendant relied on Judgment of Hon'ble Telangana High Court in S. Chakrapani Reddy Vs.. Y.Sirish Reddy on 3 December, 2021 CRP NO, 596 of 2021 In the case on hand also, the plaintiff has filed the original suit in the year 2006 for injunction simplicitor, obtained temporary injunction and he has been enjoying the same for the last 15 years, now “ after commencement of the trial” in the year 2012 itself, when the issues were settled and after “ commencement of the proceedings” when the evidence affidavit of PW.1 was filed on 16.09.2013. after lapse of more than seven years, the present application is filed for amendment of boundaries of suit schedule property. The court below without recording its satisfaction that in spite of due diligence the plaintiff could not introduce the proposed amendment before commencement of the trial has allowed the proposed amendments which will change the very location of the suit schedule property, thereby the order impugned is not sustainable and liable to be set aside.

**As to Point Nos.1 and 2:-**

8. Before discussing the rival contentions, it is necessary to see the provisions of law. *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.”*

9. 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.

10. Before proceeding further it would be just and proper to look into record and proceeding. Perusal record. It reveals that, plaintiff seeks permanent injunction. On response of suit summons, defendant appeared and filed W.S. and Say at Exh. 13. the matter is pending for the hearing on Exh. 5. Through instant amendment plaintiff seeks to add some fact in respect of gift-deed executed and registered on 02/12/2020 and correction deed i.e.

*Chukdurusti Lekh* executed and registered on 21/12/2021. It is averred in application that, due to oversight of mistake the four boundaries of suit properties is not mentioned in gift-deed. Therefore, later on correction deed has been executed in respect of four boundaries. By way of proposed amendment the plaintiff want to amend the plaint and Exh.5 by adding para 2-A which is shown in present application.

11. The present application is supported by affidavit of plaintiff. No doubt, trial of the suit yet be commenced. The question is whether the proposed amendment is essential in order to determine the real dispute in controversy by way of proposed amendment the plaintiff intending to brought on record the facts which is happened after execution of gift-deed. The copy of correction of deed is on record it's shows it is executed on 21/12/2021 after filing of present suit i.e. 27/07/2021. It is executed in respect of boundaries shown in previous gift-deed. Considering the proposed amendment I am of the opinion that, proposed amendment merely clarifies and to add some facts which is happened after filing suit.

12. In the Judgment of Hon'ble Telangana High Court in S. Chakrapani Reddy Vs.. Y.Sirish Reddy (supra) the fact is that, the plaintiff has filed the original suit in 2006 and obtained temporary injunction near about 15 years. The plaintiff filed application for amendment of boundaries of suit property. But, in case in hands the plaintiff want to add some additional information/ facts which is happened after filing of suit. Exh. 5 yet be decided. The commencement of proceeding is not begin. The

plaintiff has not intending to amend the boundaries of suit property by way of proposed amendment. Therefore, with due respect the judgment relied by defendant is not helpful to him.

13. It is settled principle of law that, the courts have more liberal in granting amendment, therefore in order to adjudicate the matter on merit and to resolve the real dispute on controversy, opportunity to plaintiff needs to be given.

14. Considering the nature of suit and stand taken by the plaintiff, I am of opinion that, proposed amendment is essential in order to determine the real dispute in controversy. Considering the circumstances, no prejudice will be caused to defendant if present application is came to be allowed. The defendant also chance to file his additional W.S. and Say in respect of proposed amendment. Thus, proposed amendment is clarification of events happened after filing of suit and will not change nature of the suit. Moreover, it is essential for complete adjudication of the dispute. Hence, I answered point No. 1 in the negative and point No.2 in the affirmative and in view of point no. 3 I pass following order

### ORDER

1. Application is hereby allowed.
2. The plaintiff is directed to amend the plaint and Exh.5 as proposed on or before next date.
3. The plaintiff is directed to supply copy of amendment plaint for the Court record as well as for the defendant.

4. Costs on plaintiff.

**Date:- 16/04/2022**

**(S.N. Gavali)**  
Jt.Civil Judge Junior Division  
Risod.

**CERTIFICATE**

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

Name of the Stenographer	:	<b>Rohan S. Koshti (L.G.)</b>
Name of court	:	Jt.C.J.J.D.& JMFC, Risod.
Date	:	16.04.2022
Order signed by the Presiding Officer	:	16.04.2022
<b>Order uploaded on</b>	:	<b>18.04.2022</b>