

Order below Exh. 1193 in Spl. Civil Suit No. 1524/2014
(Sheetal Kalyani Vs. Mrs. Sulochana N. Kalyani & ors)

1) This is an application by plaintiff under Order VI Rule 17 of C.P.C. for the amendment in the plaint.

2) As per the contents of application the present suit is filed for partition and separate possession. It is contended that, during the pendency of suit defendant Nos. 6 and 7 have applied for setting aside No W.S. order and they have filed their written statement and counter claim. The plaintiff has gone through the said counter claim and has found that, there are several properties which were not known to the plaintiff at the time of filing of suit. Therefore plaintiff by way of proposed amendment wants to add the such properties in para No. 2(b) to 2(e) of the plaint and needs to claim possession thereof.

3) It is contended that, the said properties have come to be knowledge of plaintiff subsequent to the filing of the present suit therefore there is need that, such properties should be included in the suit properties of the plaint. Therefore, plaintiff bay way of proposed amendment wants to insert the 4 properties fulfilled described in this application.

4) It is contended that, apart from immovable properties, the following are the other properties of HUF of coparcenary properties i.e. share holding in the capital of defendant No. 10 to 130 and 135 to 183 held by members of HUF or by companies in which they hold the

shareholding as set out in the plaint. Share in the defendant Nos. 131 to 134 held by defendants Nos. 12, 16, 32, 58, 57, 105, 108, 124, 48, 106, 122, 125, 49, 118, 135 and 140.

5) It is further contended that, the present amendment is necessary and same will not change the nature of present suit. It is further contended that, if the amendment is allowed then no prejudice will be caused to the defendants but on the other hand if amendment is refused then plaintiff would suffer great hardship and injustice. It is further contended that, plaintiff is seeking amendment to add HUF Properties which have come to her knowledge subsequent to the filing of the suit. Therefore application is required to be allowed. Hence plaintiff prayed that, application for amendment may be allowed.

6) Application is opposed by defendant No. 1 to 5, 9 to 13, 15, 17, 19, 22, 25, 26, 27, 30, 32, 34, 36, 37, 39 to 41, 45, 47 to 50, 52, 57, 105, 64 to 67, 69, 73, 74, 75, 84, 87, 88, 89, 92, 96 to 104, 106 to 109, 116 to 118, 121, 124 to 127, 130, 135, 136, 137, 140 to 145, 147, 161, 162, 171 to 176, 180, 181 by filing say at Exh. 1255, 1282, 1382, 1275, 1283, 1284, 1285, 1357, 1286, 1287, 1288, 1289, 1290, 1291, 1292, 1293, 1294, 1358, 1295, 1296, 1297, 1298, 1299, 1300, 1301, 1302, 1359, 1360, 1303, 1304, 1305, 1361, 1362, 1306 to 1327, 1363, 1328, 1364, 1329, 1330, 1331, 1365, 1332, 1366, 1367, 1333, 1334, 1335, 1368, 1336, 1337, 1369, 1338 to 1347, 1370, 1348, 1349, 1350, 1351, 1352, 1353 to the present application upon the various ground mentioned in the said say.

7) Considering the rival contention of the parties following

points arise for my determination and I have recorded my findings thereon with reasons as under.

Sr. No.	Points	Findings
1	Whether proposed amendment is necessary for the purpose of determining the real question in controversy between the parties ?	In the affirmative.
2	What order ?	Application is allowed as per final order.

REASONS

8) I have heard argument advanced on behalf of both parties at length. Learned Advocate of plaintiff submit that, one Nilkanth Annappa Kalyani was the common male ancestor who died on 24/08/2013 leaving behind plaintiff and defendant Nos. 1 to 9 and his legal heirs. Defendant No. 1 is the wife of deceased Nilkanth Kalyani. Defendant No. 2 and 6 are the sons of Nilkanth Kalyani. Defendant No. 9 is the daughter of deceased Nilkanth Kalyani. Plaintiff is the daughter of defendant Nos. 6 & 7. He submit that, as per the schedule 1 Annexed with the plaint suit for partition is filed for partition of movable and immovable properties belonging to the joint family properties. He argued that, plaintiff was not aware all the HUF properties but the defendant Nos. 5 and 6 have filed their written statement then plaintiff came to know about the 4 immovable properties as mentioned in this application and same are also joint

family properties. The movable properties involved in the suit are the shares of joint family properties attached with defendant Nos. 10 to 130, 135 to 183 and 131 to 134. He also submit that, trial of the suit is not commenced therefore the suit properties are required to be added in to the common hot-potch in to the suit. He also submit that, suit is for partition therefore these immovable properties though situated outside the territorial jurisdiction of this suit but same can be added in this suit as both courts have concurrent jurisdiction. He also submit that, if this application is allowed then defendants have opportunity to file their written statement therefore there would be no prejudice or otherwise would cause to the defendants. He also submit that, to decide the controversy between the parties the amendment is necessary and merits can be considered at this stage.

In support he has relied upon ruling-

AIR 2006 SC 1647, Rajesh Kumar Aggarwal & ors. Vs. K.K. Modi & ors, wherein it was held that,

Merits of proposed amendment not to be gone into at the stage of allowing the amendment.

2007(6) ALL M.R. 800, Janardan Urkuda Waghmare Vs. Ratanlal Kashinath Gudekar, wherein it was held that,

Merits of amendment cannot be looked in to while considering the application for amendment. Parties are always at liberty to oppose the merits of the amended portion and to rebut the pleadings and proof.

2016(1) ALL M.R. 550, Rajbahaddur Jiyaram Yadav Vs. Prakash @ Pappu Jiyaram Yadav & ors, wherein it was held that,

In a suit for partition amendment is sought in the midst of final arguments, to include property excluded, then such amendment can be allowed subject to conditions of payment of costs with view to reduce hardship of other side.

In a ruling in para No. 19 it was also held that,

In the light of the same, I find that the ends of justice would be met by permitting the petitioner to amend the plaint so as to include all the properties which has been left out and which are situated in Uttar Pradesh.

9) On the other hand learned Advocate of defendant No. 1 submit that, though suit is for partition but the amendment cannot be allowed as a matter of right as there is collusion between plaintiff and defendant Nos. 1 and 6. He also submit that, in the original plaint, plaintiff has not given subject matter from the suit according to schedule mentioned in the plaint. He also submit that, some other properties are mentioned in written statement Exh. 995 filed by defendant No. 1 are not included in to the common hot-potch of the suit, therefore said piecemeal amendment cannot be allowed. He also submit that, in the application for amendment, there are no clear recitals as to the persons in whose name these 4 immovable properties are standing. He also submit that, all 4 properties of out of territorial jurisdiction of this court, therefore same cannot be included into the common hot-potch of this suit. He also submit that, plaintiff has no cause of action to file the present application. Therefore same is liable to be rejected.

10) In support he has relied upon a ruling **1977 AIR 2421, T. Arivandandam Vs. T.V. Satyapal and anr**, wherein it was held that,

If on a meaningful nor formal reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he (munsif) should exercise his power under Order VII Rule 11, of C.P.C. taking care to see that the ground mentioned therein fulfilled. And, if clever drafting has created the illusion of a cause of action, it should be nipped in the bud at the first hearing by examining the party searchingly under Chapter X of C.P.C..

He also relied upon a ruling, the **Church of Christ Charitable Trust and Educational Charitable Trust** represented by it's Chairman **Vs. M/s Ponniamman Educational Trust** represented by its Chairperson / Managing Trustee, Civil Appeal No. 4841 of 2012, wherein it was held that,

If there are shortfall in the plaint averments, statutory provisions, namely, order VII Rule 11, Rule 14(1) and Rule 14(2), Form No. 47 and 48 in Appendix A of C.P.C. which are statutory nature, needs to be invoked and plaint is required to be rejected.

He also relied upon a ruling **Chandrakant Kantilal Jhaveri & 1 Vs. Madhuriben Gautambhai & 1**, F.A. No. 4676/2008 wherein the Hon'ble Gujarat High Court held that,

If plaint do not disclose cause of action, plaint is liable to be rejected under Order VII Rule 11(d) of C.P.C.

11) Learned Advocate of defendant No. 2 adopted all the argument advanced on behalf of defendant No. 1 and in addition submit that, the application for amendment has no proper verification therefore same is liable to be rejected. He also submit that, prayer clause of this application is vague therefore such vague amendment cannot be allowed. He also submit that, in the amended suit though movable properties are involved but single immovable property is not

included at the time of filing of present suit, therefore such amendment cannot be allowed. He also submit that, as per the letter dated 03/04/2013 placed at Exh. 3/11, plaintiff has knowledge of all these properties but same has not been included at the time of filing of suit. He also submit that, there is Will of Nilkanth Kalyani dated 21/04/2000 but same has not been produced. Therefore defendant No. 2 also prayed for dismissal of application. Rest of the defendants have adopted the argument advanced on behalf of defendant Nos. 1 and 2 and prayed for dismissal of the application.

As to Point No. 1 :-

12) I have considered submissions made on behalf of both parties and gone through the documents on record. Admittedly, at the time of institution of suit various movable properties are included in the suit claim. After service of summon the defendant Nos. 6 and 7 who are the parents of plaintiff, have presented their written statement Exh. 995. Therefore, first time the plaintiff get knowledge of the four immovable properties at set out in para No. 2 of this application situated at Karad and Mumbai respectively. This fact itself shown to be a ground for seeking amendment in the plaint to include these four immovable properties in to the common hot-potch of the suit.

13) The law relating to amendment in the pleading is settle one. In the present suit yet trial of the suit is not commenced therefore, proviso to Rule 17 of Order VI of C.P.C. has no application in order to decide this application. Therefore, in view of Rule 17 of C.P.C. a party to suit can apply to alter or amend his pleading in such a manner if such amendment shall be necessary for the purpose of determining the

real controversy between the parties. Therefore, the contentions raised on behalf of defendants that, plaintiff cannot amend her pleading as a matter of right cannot be accepted. The Ld. Advocate of defendant have also raised various points including knowledge of plaintiff about execution of Will dated 21/04/2000, the point of limitation and the immovable properties sought to be added in the suit claim are not situated within the territory jurisdiction of this court. Therefore, it is necessary to see whether in such circumstances amendment can be allowed or not. In support of these points the Ld. Advocate of defendants has mainly relied upon a ruling of T. Arivandandam *cited supra*. The said ruling in respect of exercise of powers under Order VII Rule 11 of C.P.C. In the said ruling it was held that, if on meaningful nor formal reading of the plaint it is manifestly vexatious, a merit less, in the sense not disclosing clear right to sue or there is a clever drafting has created illusion of cause of action, such suit should be nipped into bud at the first hearing by examining the party. Considering the ratio laid down in the aforesaid ruling and facts of the present suit, same cannot be made applicable to the case at hand particularly at the time of deciding application under Order VII Rule 17 of C.P.C. The another ruling relied by the defendant No. 1 The Church of Christ Charitable Trust and Chandrakant Zhaveri are also on same point, therefore, the said ruling also cannot be made applicable to the case at hand.

14) The Ld. Advocate of plaintiff has relied upon a ruling of Hon'ble Apex Court Rajeshkumar Agarwal *cited supra* wherein it was held that, while considering whether an application for amendment should or should not be allowed, the court should not go into the correctness of falsity of the base in the amendment. Likewise it should

not record the finding on merits of the argument and merits of amendment sought to be incorporated by way of amendment or not be adjudged at the stage of allowing prayer for amendment. The ratio laid down in the aforesaid ruling is applicable to the case at hand. Therefore, it is clear that, at the time of deciding of this amendment application court cannot consider the merits of amendment. Upon amendment the properties situated beyond jurisdiction of this court would come into the common hot-potch of the suit and thereafter whether this court would have jurisdiction to decide the suit or not it is separate point and same cannot be adjudged at this stage.

15) Thus considering aforesaid facts and circumstances of the suit I am of opinion that, the proposed amendment is absolutely necessary for determining the real controversy between the parties. Therefore, application is liable to be allowed. Hence I answer my affirmative finding on point No. 1 and proceed to pass following order.

ORDER

- 1] Application is allowed as prayed for.
- 2] Plaintiff shall carry out the amendment in the plaint and shall submit the copy of amended plaint within the stipulated period.

Date : 30/11/2016

(Shri D.D. Almale)
3rd Jt. Civil Judge S.D. Pune.