

ORDER BELOW APPLICATION OF PLAINTIFF UNDER ORDER 6

RULE 17 OF CPC.

This is a suit for partition, declaration and disclosure of accounts of the Hindu Joint Property and relief of permanent injunction. The prayers sought in the suit requires consideration for adjudication of this application. Prayer clause no. 1 in para 47 of the plaint is that declare that the assets listed in Annexure A, B and E annexed hereto and the properties that may be added to the annexure over the course of these proceedings, be declared as properties belonging to Kalyani family HUF. As per prayer clause C plaintiffs are claiming 1/9th share in the HUF claiming to be coparcener. Prayer clause D is that order and direct the defendants to render full and complete accounts and disclosures along with the title documents and relevant books of accounts pertaining to the HUF which do not form presently the part of Annexure A, B and E. Prayer clause G also mentions that during pendency of this *lis* directions for disclosure to defendants be made in respect of other immovable properties in control by the defendants which has been purchased using joint family funds of HUF which do not form part of annexure A to E.

2. So, from perusal of all the pleadings in the plaint particularly the prayer clauses it can be ascertained that the suit came to be filed without having knowledge of all the properties which came to be purchased from the HUF of Kalyani family.

3. By this application the plaintiff who are children of defendant no. 6 are claiming to be coparcener and having share in

the suit properties. Plaintiffs resides in Mumbai. Thus, did not have access to the the documents of Kalyani family HUF. The defendant no. 1 is Karta of the family who looks after the HUF. All the relevant financial property documents were in control of defendant no. 1. It is contended that plaintiff has mentioned in the plaint the properties which were within knowledge to the party at that time and therefore ancillary relief of disclosure from the defendants is also claimed. By this application plaintiff is intending to provide better particulars of the properties which came to know after filing to the present suit in the further investigation done by the party.

4. Mediation is failed.

5. The plaintiff had already reserve their rights to carry out amendments to the plaint. It was mentioned in the plaint that list of assets and business is not exhaustive and only to the extent of knowledge/information to the plaintiff is pleaded. By the present application the plaintiff are bringing better description of the properties, adding to the properties, business and assets purchased from the joint family property. There is no change in the nature of suit. No loss or prejudice will be caused to the defendants by way of proposed amendment. Therefore, by para 12 of the application the plaintiff proposed to carry out the following amendments.

6. The plaintiffs propose to carry out the following amendments:

- (a) Annexures A, B and E to the plaint be substituted and replaced with the Annexures "A", "B" and "E" respectively, as annexed hereto.
- (b) After the words "any third party rights in the properties of the

HUF” in the last line of para 40, the following to be added-
“including and not limited to exercising any voting rights on the shares of the entities which commenced from the funds/nucleus of the aforesaid HUFs. Gross prejudice and loss will be suffered by plaintiff if these assets are not secured during the pendency of the proceedings as the defendants have repeatedly transferred these assets to the detriment of plaintiff and there will no properties left in the HUF”.

(c) The following be added as Prayer nos. (h1) and (h2)

“(h1) Pending the hearing and final disposal of the present suit, the defendants be directed to exercise voting rights in accordance with the wishes of the family and as per the directions/orders of the Court”.

“(h2) Alternatively, pending the hearing and final disposal of the present suit, an administrator be appointed with the right to exercise voting rights in the best interest of the coparcenary and as per the directions and/or orders of the Court”.

7. With these submissions and prayers plaintiffs have prayed for allowing the amendment to be carried out.

8. Defendant no. 1 appeared and filed say thereby objected the application strongly. It is contended that suit filed by the plaintiff is not maintainable and does not disclose the cause of action. The suit properties are self acquired. It has no connection with the HUF and thus not subject of partition. The prayer for disclosure is not maintainable and defendant is not obligated to provide as plaintiffs are not member of the Kalyani family. The proposed amendment are expanding the scope of the suit. The application is mala fide.

Defendant no. 6 is acting in concert with the plaintiffs. Defendant no. 6 has filed the Suit no. 250/2023 before the Hon'ble Bombay High Court to seek transfer of shares of Hikal Ltd. Company.

9. For the above reasons the defendants had on these grounds filed 7/11 application which is already pending and after that this application is moved. It is argued and contended by defendant no. 1 that verification in the application is incomplete. The verification in respect of documents annexed is not given. The copy provided in the proposed annexure A entries at serial no. 43 to 45 and 47 to 250 about the shares is incomplete as to owned by whom and what is the quantity. Even if the amendment is allowed it will remain to be incomplete pleadings as per the overall contents of the plaint and this application.

10. Annexure B is filed with the plaint, by new annexure B which is proposed the complete subtraction of earlier annexure B will be there. The annexure B now proposed is completely replacing and it is new.

11. Annexure E again is subtracting the original annexure E which is with the plaint. Proposed annexure E contents 78 entries and the old annexure E contents 12 entries. The number of properties is also getting changed. The list of properties as per the claim of the plaintiff in the plaint and in this application is not exhaustive. Therefore, the suit for partial partition in view settled law is not maintainable. The very suit of the plaintiff is technically defective. Therefore, the application is also not liable to be entertained and thus deserve to be rejected. The defendant no. 6 is the mother of plaintiff born prior to 1952 i.e. before coming into

existence of Hindu Succession Act. As per the amendment of 2005 in the act, at the most she can be considered to be the coparcener. However, the Son i.e. plaintiff no. 1 has no locus at all because he does not come within the purview of Section 6 of the Hindu Succession Act. Both the plaintiffs are actually having no locus. The second plaintiff daughter also cannot claim to be having rights by virtue of coparcenary interest for the reason the mother is alive. Section 6 does not include the son of the coparcener, only daughter of the coparcener is covered. Thus, the suit is not maintainable.

12. Defendant no. 6 had already filed the suit for declaration of coparcenary status. The subsequent suit for partition is also filed by the defendant no. 6 in the year 2014 before the Court of Hon'ble Civil Judge Senior Division Pune which is pending. The present plaintiff no. 1 is the power of attorney appeared in that case on behalf of the defendant no. 6. Therefore, both the plaintiffs can claim relief in that suit which is previously instituted. As far as the prayer clause B in the proposed amendment is sought the voting rights of the shareholders are statutory rights which is regulated by the statute as per Section 47 of the Companies Act. It cannot be regulated by court or administrator appointed by the court. The prayer clause C is also not final prayer. In prayer H1 and H2 "pending hearing and final disposal of the present suit" relief is sought. Thus, the prayer after amendment also will not be complete to adjudicate the issues or the suit finally. The Company maintains the register of the equity holders. Therefore, joinder of the company is necessary if, prayer clause B and C are to be allowed or to be considered because it will affect financial status of the company. Thus, what cannot be done directly, cannot be done indirectly. It is a policy right. Thus the

information provided or supplied by the plaintiff is incomplete.

13. If the proposed amendments are allowed how defendant will be able to give reply/counter amendment. This will ultimately paralyzing process and the court to proceed further.

14. Section 430 of the Companies Act bars jurisdiction of this court. On these legal submissions only the present application is defective on technical aspects. Therefore, same is liable to be rejected. Accordingly it is prayed on behalf of defendant no. 1 for rejecting the application.

15. Learned counsel for the defendant no. 2 adopted the say and argument of defendant no. 1.

16. Learned counsel for the defendant no. 6 mother of plaintiff has submitted no objection for the said amendment.

17. Learned counsel for the defendant no. 3 argued and objected the amendment. According to them as per Section 6 of Hindu Succession Act. Daughter of the coparcener i.e. plaintiff no. 2 may be considered to be having right in view of coparcenary interest, however, in the life time of mother she cannot claim. As per Section 14 the Act property vested to the female coparcener becomes absolute property.

18. Earlier civil suit for partition filed by defendant no. 6 is having Special Civil Suit no. 1524/2014 same is pending before the competent court. The plaintiff no. 1 is the power of attorney for defendant no. 6 (mother) in that suit. Property in that suit is same. Plaintiffs are having knowledge of that suit since they appeared in that suit i.e. in the year 2014. Therefore, the limitation is also lapsed.

19. As far as proposed annexure E there is nothing mentioned who is the owner of those properties. The immovable property is owned by whom is not disclosed. Thus, the vague amendments cannot be allowed. For the prayer clause B and C the Companies whose financial position is going to affect are the necessary parties. Therefore, application is liable to be rejected on the technical ground for the reason the suit is not maintainable.

20. Learned counsel for the defendant no. 4 and 5 adopted say and argument of defendant no. 3.

21. I have heard all learned counsel representing the parties. Following points arise for my determination to which I have recorded my findings as under:

Sr. No.	Points	Findings
1	Whether the proposed amendment is necessary for the purpose of determining the real question in controversy between the parties ?	Yes, for prayer clause (a) of the application only.
2	Whether nature of suit will be changing if proposed amendments are allowed ?	Partly affirmative for prayer clause B and C of the application.
3	Who will suffer if the application is rejected in toto ?	Plaintiff.
4	What Order ?	Partly allowed as per final order.

REASONS

22. I have heard all the learned counsel representing respective parties. I have also considered the written notes of arguments of plaintiff and defendant no. 1. The citations relied by all the parties are considered for the adjudication of this application.

The judgment relied by learned counsel for plaintiff *Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Ors. reported in MANU/SC/1724/2009*. The para 67 is relevant wherein factors to be taken into consideration while dealing with the application for amendment are laid down by the Hon'ble Apex Court. The learned counsel for the defendant no. 3 relied upon authority of *Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and anr. reported in AIR 2022 Supreme Court 4256*. The para 70 is relevant wherein again factors to be taken into consideration while dealing with the application for amendment are laid down by the Hon'ble Apex Court. Considering the guidelines given in the both the authorities the present application is adjudicated in peculiar facts and circumstances of this case.

23. The learned counsel for the defendant no. 1 has contended that suit for partial partition is not maintainable and relied upon the judgment of *Kenchegowda (Since deceased) by Legal Representative Vs. Siddegowda Alias Motegowda reported in (1994) 4 Supreme Court Cases 294*. However, the facts and circumstances of the present case are different then the authority. Moreover, it is settled position of law. At this stage it will be pre judicial to conclude that the suit is actually amount to partial partition. The reasonable opportunity of trial and the complete material will be required to the findings on the point of partial partition. Therefore, at this stage the judgment is not much helpful.

24. It is further argued on behalf of defendant no. 1 that technically the verification which is attached to the present application is not complete and the application and the documents are not verified. Therefore, the application needs to be rejected.

However, the learned counsel for the plaintiff on this has argued that verification is required to be pleading and not the annexures. The application for amendment is as such not pleading unless it is made absolutely by the court. Once the amendment is allowed, and the same forms part the suit, then the same will have to be verified. The submissions are considered the technical error appears to be there in the verification. Some portion are left blank on the verification. However, it is duly signed by the parties and the counsels. It is notarized therefore the affirmation therein can be considered. As per Order 6 Rule 15 the verification of pleadings is required. Moreover, there is substance in the argument of learned counsel for the plaintiff if the amendment is allowed and proceeded for incorporation in the main plaint then the verification of pleadings is required. However, as the application is notarized the same can be considered to adjudicate the application on merits at this stage. Thus, on this ground the application cannot be rejected. In view of these arguments and submissions the application is considered ahead.

25. Admittedly the matter is yet to proceed for trial. It is at the pre-trial stage.

26. Considering the prayers in the plaint it can safely be inferred that the plaintiffs were unaware of all the joint family properties at the time of institution of the suit. Right to add the properties was claimed to be reserved in the plaint itself. Particularly plaint and prayers clearly reflects that in respect of all the properties the suit was not filed. For that reason the plaintiff knowingly moved to institute the suit with the prayer that the mentioned properties are not exhaustive. So deliberately it was mentioned in the prayer clauses that the properties that may be subsequently added in the

annexures in overall course of the proceeding be also be considered before adjudicating the entire claim as per the said prayer. The right is specifically reserved by plaintiff in plaint itself apprehending that they are unaware about all the properties at the time of institution of suit. It is further can be ascertained as stated in the application that plaintiffs were under investigation to know all properties purchased from the source of HUF of the said family.

27. Thus, scope in this application is very limited to consider whether the amendment will allow the court to adjudicate and determine the real question between the parties, whether the scope or nature of the suit will be changing and on what terms it will be justified to allow the amendment application at the pre trial stage.

28. In respect of the proposed amendment prayer clause (a) wherein annexure A, B and E of the plaint is prayed to be allowed to be substituted with annexure A, B and E in the proposed amendment.

29. The right in respect of adding the properties and ancillary relief in the suit was already reserved by the plaintiffs with apprehension that all the properties are not covered in the suit. However, there is substance and fair ground raised in the argument advanced on behalf of the defendant no. 1 that annexure B and annexure E is completely getting subtracted from the original plaint if the prayer is allowed. However, if proposed annexure B and E is considered though, it is replacing. However, the old property are also mentioned in it and with better details and other additional properties are shown in it. Moreover, as per Order 6 Rule 17 of CPC the word “alter or amend his pleading” is used. Thus, the alteration

is within the purview of the rule. Therefore, it will certainly assist the court to determine the real question in controversy. The prayer clause (a) if allowed will not change the nature of suit. Moreover, considering the HUF and other sources of avenues of the HUF the knowledge of all the properties at the time of institution of the suit cannot be accepted to be having to the plaintiffs being the member of different family staying at Mumbai since long. Moreover, the defendants are having opportunities in the further stages of the trial to reply the same. No substantial hardship or prejudice will casue to defendants. Therefore, by appropriate condition and in the interest of justice considering the stage of pre-trial and as due diligence of reserving right is shown by the plaintiff. The prayer clause (a) in the proposed amendment deserves to be allowed.

30. As far as prayer clause B and C about the voting rights on the shares of the companies is concerned and appointment of administrator to exercise of right of vote in the said companies is concerned. There is no cogent and sufficient material to grant this reliefs. The proposed pleadings to that respect appears to be only on surmises. There is no cogent and relevant material or information on these facts brought by the plaintiff. Moreover, the relief that defendants be directed to exercise the voting right in the companies with the wishes of the family or as per the direction of the court is not within the domain of this court to regulate. Moreover, the implementation of these activities will be pre judicial at this stage particularly when there is no authentic material brought.

31. The prayer clause H1 and H2 in para C of the prayer clause are claimed “during pendency of the suit” and “even after final disposal”. These prayer clause are not certain. These prayer clause

will directly, indirectly affect the functioning of the respective company in case further motions are taken at the instance of court or by party concern allegedly claiming interest. The prayer clause H1 and H2 is impracticable to be dealt with as there is least possibility among member of the HUF to come in concurrency to decide the vote. Moreover, the court is also not able to regulate these things. On this issue the learned counsel for the defendant no. 1 relied upon judgment of *Jyoti Basu and others Vs. Debi Ghosal and others reported in (1982) 1 SCC 691* and contended that as per para 8 of the judgment right to elect in a democracy is a statutory right. The judgment relied is distinguishable on the facts that it is the matter of election of the Minister which came to be challenged in the authority and the law on the point of election came to be settled by the Hon'ble Apex Court. However, the facts are not applicable in the present set of peculiar circumstances of this case. However, as discuss above the entry in subject of election or voting right of the company will give rise to complexity in the suit. Therefore, these prayers cannot be allowed.

32. The voting rights are regulated by the statute as per Section 47 of the Companies Act. It has to be regulated in democratic way. The Civil Court is having no jurisdiction as per Section 430 of the Companies Act. Therefore, the regulation of these facts or rights cannot be done by the court. Even the appointment of the administrator to determine and regulate the voting rights is not feasible and judicious.

33. Moreover, the alternate remedies and appropriate forum is available to the plaintiff for seeking these reliefs with cogent material and also in the later part of this suit during trial when

sufficient material is made available.

34. Learned counsel for the defendant no. 1 has relied upon the authority of *Mohanlal Chandumall and others Vs. Punjab Company Ltd., Bhatinda and other* reported in AIR 1961 Punjab 485 and *Sharad Doshi Vs. Adjudicating Officer and another* reported in 1998 SCC Online SAT 2. Both these judgment are considered the same are on the point of how the voting rights of a shareholder can be changed and it has to be exercised as per the wishes of shareholder holding such right which cannot be otherwise regulated then the statute. The judgment are distinguishable on facts and circumstances for the reason that these are the issues which could have been better appreciated if there would have been complete details from the side of plaintiff. Therefore, the judgment are not much helpful at this stage.

35. There is no material available as to which of the defendants are having which companies share and the quantity thereof. There is no iota of evidence or material at this stage to infer that the shares as mentioned in the annexure E are obtained by way of HUF funds. These are the issues which requires to be adjudicated by the appropriate forum. Allowing these prayers particularly prayer clause B and C to be added in the plaint it will give rise to complexity of the suit and complex issues will arise. Even if it is allowed same cannot be regulated by this court. The regulation of these voting rights are provided by the statute in a democratic way. For that to getting name change the appropriate authority is available to the plaintiff. Moreover, if sufficient material is found at the later stage of trial the necessary motion can be taken.

36. Prayer clause B and C if will be allowed to be added that will cause complexity of issues which is not desirable. Moreover, allowing these prayers may will give rise to invitation for the joinder to the unwanted parties in the suit of family partition. Thus, allowing these prayers will not be assisting the court. Thus, these amendments are not necessary for the purpose of determining the real question in controversy between the parties. Moreover, these amendments will change the nature of suit. The information from the side of plaintiff in respect of these amendments sought is incomplete. Therefore, even though the trial is yet to commence allowing this application for prayer clause B and C will amount to giving rise to complex situation. There is no due diligence on the part of the plaintiff to give exact details in respect of these equity properties. Appropriate forum is available. Therefore, in the interest of justice prayer clause B and C of the proposed amendment is liable to be rejected. Thus, in view of above discussion the court answers the findings to the points accordingly. Thus, in the interest of justice I pass the following order.

ORDER

1. Application is partly allowed.
2. Prayer clause A of the proposed amendment is allowed.
3. Prayer clause B and C of the proposed amendment are rejected.
4. The plaintiff shall carry out the amendment within 14 days and fresh copies be supplied accordingly.

Date: 21/08/2025
Pune.

Sd/-
(**V. R. Assudani**)
20th Jt.CJSD & Add. CJM, Pune.