

MHND100009742023

**ORDER BELOW EXH.10 IN RCS.NO.152 /2023**

(Passed on 22/11/2023)

The plaintiff has filed present application under Order-VI, Rule-17 of the Code of Civil Procedure for amendment in the plaint.

2. The plaintiff contends that, she has filed the present suit for partition and separate possession of her share into the suit fields, alongwith the relief of perpetual injunction. The plaintiff contends that, in inadvertently one of the field Gut No.32, admeasuring area 0.97-HR, situated at village Harbal, Tq.Kandhar, Dist. Nanded is remained to include in the present suit for partition. Therefore, she prayed to allow the application and permit her to amend the plaint by inclusion of the field Gut No.32, admeasuring area 0.97-HR, situated at village Harbal (P.K.), Tq.Kandhar, Dist. Nanded in the claim clause of the suit.

3. The defendant Nos. 1 & 2 filed their say to the application and thereby cited no objection to include the field Gut No.32, admeasuring area 0.97-HR, situated at village Harbal (P.K.), Tq.Kandhar, Dist. Nanded in the plaint. So far as, say of other defendants to the present application is concerned, it is pertinent to

mentioned that, some of the defendants are appeared, but they failed to file their say to the application and some of the defendants are yet to appear in the suit.

4. Perused the case record. Heard learned Advocates for the plaintiff and defendants. Following points arise for my determination and I record my findings against each of them for the reasons stated thereunder :-

<u>Points</u>	<u>Findings.</u>
01 Whether the proposed amendment is just and essential to elucidate the controversy in the present case ?	Yes.
02 What order ?	Application is allowed as per final order.

Point Nos.1 & 2 :-

5. Admittedly, as per Order-VI, Rule-17 of the CPC., the Court may at any stage of the proceeding, allow either party to alter or amend his pleading in such manner and on such terms as may be just and which will essential to elucidate the controversy in hand. In the light of provision as enshrined under Order-VI, Rule-17 of the CPC., it is required to see whether the proposed amendment is essential to elucidate the controversy in the case at hand or not.

6. In this regard, when I go through the case record, it appears that, the suit is filed for partition and separate possession in the suit field. Admittedly, a suit alike partition, it is expected to

have all properties and parties on record to decide the said disputes finally and completely. In this regard, it is binding on the plaintiff to mention the all properties in the case at hand in order to decide the claim therein completely and effectually.

7. In this regard, after going through the contention in the application, it appears that, as per plaintiff field Gut No.32, admeasuring area 0.97-HR, situated at village Harbal (PK.), Tq.Kandhar, Dist. Nanded is remained to add in the case at hand, while present in the suit. As per plaintiff, in inadvertently she could not include the said property in the case. It is therefore, she prayed for allow the application and to permit her amend the plaint to the extent of addition of field Gut No.32, admeasuring area 0.97-HR, situated at village Harbal (P.K.), Tq.Kandhar, Dist. Nanded in the plaint.

8. The defendants did not raise objection to the present application. On the contrary, after going through the nature of suit, it is pertinent to mention that, in order to completely and effectually adjudicate the controversy on merit and to put the litigation ending, it is just to have all properties of similar kind in a suit for partition. However, here in the case at hand, due to oversight of plaintiff she could not include aforesaid field Gut No.32, admeasuring area 0.97-HR, situated at village Harbal (PK.), Tq.Kandhar, Dist. Nanded in the plaint, while presenting it in the court. Considering the nature of amendment, in my view no prejudice will cause to the defendants, if amendment is allowed. On

the contrary, if plaintiff does not permit to amend the plaint as mentioned above, then it will create hurdle in deciding in the case on merit and effectively. Hence, I answer point No.1, in the affirmative. Considering the findings to point No.1 I proceed to pass following order towards answer of point No.2 :-

ORDER

- 1) Application is allowed.
- 2) Plaintiff is permitted to amend the plaint in respect of addition of field Gut No.32, admeasuring area 0.97-HR, situated at village Harbal (P.K.), Tq.Kandhar, Dist. Nanded.
- 3) The plaintiff shall amend the plaint as prayed for, accordingly within 14 days from today and shall file amended copy of plaint on record. Plaintiff shall supply amended copies of plaints to all defendants as per rule.
- 4) Cost in the main cause.

Place - Kandhar.
Date : 22/11/2023

Sd/-
(P. D. Azade)
2nd Joint Civil Judge (Jr.Dn.),
Kandhar.