

SPCS/84/2012

ORDER

Registration No.: SPCS/84/2012
Filing No.: SPCS/84/2012
Filed On: 02/05/2012
Registered On : 02/05/2012

IN THE CIVIL COURT AT BHAVNAGAR

SPECIAL CIVIL SUIT NO. 84 OF 2012.

Plaintiff:

VERSUS

Defendant:

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Appearance:

No Advocate For Plaintiff

No Advocate For Defendant

SPECIAL CIVIL SUIT NO. 84 OF 2012

Order Below Exh. 112

1. This application has been given by defendant No. 19 herein to hear the application Exh. 5 expeditiously. It is further stated that the plaintiffs have filed the application Exh. 5 for ad interim injunction alongwith the present suit and below the application Exh. 5, the Court has passed the order for notice. That the defendants herein have already filed their written statements at very earlier time, and, then, after, the plaintiffs have taken so many adjournments to submit a counter affidavit, and, on 26-03-2003, the matter was kept for hearing of Exh. 5, the

plaintiffs have filed the application for amendment in plaint, and, thereby, the intention of the plaintiffs is to delay hearing of Exh. 5. Therefore, this defendant has submitted the present application to take the application Exh. 5 on hand for hearing in first and dispose off the same expeditiously.

2. On the other hand, the plaintiffs have filed their objections at Exh. 113 against the present application wherein it is mainly stated that, defendant No. 19 has arisen no ground or reason to file the present application. That the plaintiffs have given an application for amendment to have the adjudication upon all the properties on which they have share or right. That the plaintiffs are ready for hearing of an application Exh. 5 after having the amendment as sought for by the application for amendment, and, under the law, the plaintiffs have right to file an application for amendment. That it is necessary to have the decision in respect of the properties which are sought for to come on record by the amendment. That the plaintiffs have no any bad intention to prolong the hearing of the application Exh. 5 herein.

3. In connection with this application, I have heard the arguments at length advanced before me by learned Advocates for the respective parties herein. I have read and perused the present application, the objections from other side and the entire case record.

The learned Advocate Mr. B. H. Bhatt and Mr. S. H. Trivedi for defendant No. 19 (i.e. present applicant) have produced following case-laws:

- (a) Raman Hosiery Factory, Delhi and others V/s. J. K.

Synthetics Ltd. and others, AIR 1974, Delhi, 207 (V.61, C.41(1).

- (b) JMS Labs. V/s. Yusufali Eesmail Hadvaid, 1997(2), G.L.H., 1002
- (c) Mansukhlal Pujalal V/s. Assistant Collector and Others, 1995(2), G.L.H., 712
- (d) Chandrama Singh V/s. Yasodanandan Singh & another, AIR 1972, Patna, 128 (V 59 C 31)

Whereas learned Advocate Mr. U. J. Trivedi for the plaintiffs herein has produced following case-laws in support of his arguments.

- (i) C. M. Vereekutty V/s. C. M. Mathukutty, AIR 1981, SC, 1533

I have glanced through and taken in regard the above said case-laws produced by learned Advocates for the respective parties herein.

4. On observing overall facts on record, it appears that the plaintiffs have filed the present suit for partition of ancestral properties and to cancel the document and for permanent injunction. On 02-05-2012 and alongwith the suit, they have submitted an application Exh. 5 for ad interim injunction, below which an order for notice have been passed and the same application Exh. 5 is still pending for final disposal after hearing both the parties since 15-01-2013.

It is appeared from the facts on record that the plaintiffs have submitted the application Exh. 105 for amendment on 26-03-2013 and defendant No. 9 has given the present

application Exh. 112 on 08-04-2013. Even it is also appeared from the case record that the replies from other side in connection with application Exh. 105 have already been come on record. In this circumstances, looking to the peculiar facts and circumstances of the present case, when the application Exh. 5 for ad interim injunction is pending for hearing and the application for amendment at Exh. 105 has been given by the plaintiffs to get the amendment in the plaint by adding some properties which are also sought to be covered under the subject-matter of the present suit. In that case, if the application Exh. 105 for amendment is taken on hand, to be disposed off first in relation to the application Exh. 5 herein, then, in view of the subject-matter and relief sought for in the present suit, it would be justified and there would no prejudice caused to the other side to the present suit. Therefore, in the interest of justice, I pass the following order.

ORDER

- i) The present application Exh. 112 stands as rejected.
- ii) No order as to costs.

Order pronounced in the open Court today on
12th day of September, 2013.

Place : Bhavnagar
Date : 12-09-2013

(H. J. Nenuji)
2ndAddl. Senior Civil Judge &
Addl. Chief Judicial Magistrate
Bhavnagar