

RCS/31/2009

ORDER

Registration No.: RCS/31/2009
Filing No.: RCS/31/2009
Filed On: 28/01/2009
Registered On : 28/01/2009

IN THE TALUKA COURT AT NAKHATRANA

REGULAR CIVIL SUIT NO. 31 OF 2009.

RCS/31/2009

Plaintiff :

1. Virbai Aaeedan Gadhvi
Virani moti
VIRANI MOTI

VERSUS

Defendant :

1. Dalpatram Kanji Joshi
Sukhpar
2. Vasta Bharmal Gadhvi
KotadaTharavda
3. Kiritkumar Khanji Gadhvi
KotadaTharavda

Appearance:

J.K.CHINARANA For Plaintiff 1

D.M.JADEJA For Defendant 1

C.S.THACKER For Defendant 2, 3

ORDER

Date : 18/06/2015

Place : NAKHATRANA

**MS. PRIYADARSHINI PINAKINBHAI
MOKASHI
GJ00654**

NAKHATRANA.

Order below Exhibit- 75

1. Vide this application, the plaintiff has prayed for granting permission to amend the plaint by inserting sub-para 2(g) below para- 2(f) and for amending the prayer clause 4 of para-9 in the plaint by replacing the word “defendant No. 1” with “defendant No.4”.

2. The defendant No. 4 has filed his reply at exhibit 85. Perused the reply. Heard the learned advocate for both the side.

3. Learned Advocate Mr. A R Limbani has submitted that, initially the plaintiff asked permission to add defendant No.4 as party defendant, and when the Hon'ble Court was pleased to grant his application with a direction to amend the plaint and furnish the amended copy, though the plaintiff had furnished the amended plaint, he had not carried out the amendment in the plaint but he furnished the amended plaint with the amended prayer clause, the permission for which the plaintiff had not asked for earlier. He has further submitted that, thus, the plaintiff had not acted in accordance with Law and it is only when defendant No.4 objected to such unpermitted amendment that the plaintiff, thereafter, had not pressed the amended plaint. He has further submitted that now the present application by the plaintiff would cause prejudice to the defendant No. 4 as it would change the nature of the suit. It is therefore submitted that the application be rejected. He has further submitted that, the plaintiff has not carried out the amendment as per the order passed by this Hon'ble Court earlier within the time granted and therefore he cannot be permitted to add defendant No.4 in view of provisions of rule 18 of Order 6 of Code of Civil Procedure, 1908. He has further submitted that when the defendant No.4 could not have been added as party defendant due to failure of the plaintiff to carry out the necessary amendment, there would not arise any question of amending the corresponding prayer clause, and, therefore, also, the application be rejected.

4. As against the afore said submissions, learned Advocate for the plaintiff Mr. J K Chinarana has submitted that due to over sight, the amended plaint in question was furnished with such amendments for which permission was not taken and, therefore as soon as the plaintiff came to know about this fact, he has not pressed the amended plaint. He has further submitted that the purpose of adding defendant No.4, today and earlier, is to obtain relief against defendant No.4 and it is for this reason that defendant No.4 was added. However, at that time, though it was prayed to add defendant No.4, it was not prayed for corresponding amendment in the prayer clause of the plaint. He has further submitted that if the amendment, as prayed for, is granted it would not change the nature of the suit. He has submitted that the objections raised by defendant No.4 are highly technical in nature which should not come in the way of determining the real question in controversy and, therefore, the application be allowed. In support of his submission learned Advocate Mr. Chinarana for the plaintiff has relied upon the decision of the Hon'ble High Court of Gujarat in the case of Champak Siva Patel vs. State of Gujarat, 2013 LawSuit(Guj) 1784.

5 It is pertinent to state that defendant No. 1 to 3 have not filed any reply. Also, none appeared for defendant No. 1 to 3 to argue for or against this application.

6.1 In my view, the prayer to add the defendant No.4 was already granted earlier. Therefore, it is obvious that the plaintiff had to seek some relief against the defendant no.4, and thereafter, he was required to be added. Merely because, due to over site, the plaintiff omitted to pray for the corresponding amendment in the prayer clause also, it

would not dis-entitle the plaintiff from praying for such amendment later on when it comes to his notice. It is pertinent to note that the objection raised by defendant No.4 is highly technical in nature in as much as defendant No.4 has not been able to show as to how he would be prejudice by adding him as party defendant but not praying any relief against him. The purpose of bringing amendment in the pleading is to determine the real questions in controversy and if the amendment seems necessary to carry out in this direction, there is no reason why amendment should not be allowed. The ratio laid down by the Hon'ble High Court of Gujarat in the case of Champak Siva Patel vs. State of Gujarat (supra) supports the arguments of learned advocate for the plaintiff. Therefore, I am of the view that the application deserves to be allowed.

6.2 As regards the second argument of the learned Advocate for the defendant No.4 regarding consequences of failure to amend the plaint by the plaintiff, it is necessary to note that as per the provision relied upon by Learned Advocate for the defendant No.4, the court is empowered to extend the time for amending the plaint. Considering the fact that the amendment is necessary for determining the real controversy in the suit, this court is of the opinion that the time is required to be extended appropriately in the larger interest of justice but at same time by imposing costs on the plaintiff.

6.3 For the for going reasons, I pass the following order.

Order

The application is hereby allowed.

The plaintiff is permitted to carry out the amendments as prayed for in this application by next date i.e 29-6-2015.

The plaintiff is directed to furnish amended copy of the plaint in duplicate to the Court and supply a copy to each of the defendants by next date i.e 29-6-2015.

The plaintiff is directed to pay costs of Rs.500/- to defendant No.4 and Rs. 500/- to District Legal Services Authorities, Bhuj before next date i.e 29-6-2015.

Order pronounced in the open Court today.

Date: 18-6-2015

Place : Nakhatrana

(P P Mokashi)

Principal Civil Judge.