

Regular Civil Suit No. 112/2011
Ganpat Vs. Executive Engineer MSEB

Order Below Exh.58
(Passed on 05th December, 2022)

This is an application filed by the plaintiffs for amendment in the plaint. It has been contended by them that they have brought the present suit for perpetual injunction, restraining the defendants from placing the high tension electricity line over the suit property. However, before the inquiry of interim application for temporary injunction, the electric poles No.30 & 31 have been erected by the defendants on wrong places. Resultantly, the application for temporary injunction became infructuous. Said electric poles are not as per the sanctioned plan. They have carried out the amendment to that effect in the plaint on earlier occasion. However, some contents are remained to be mentioned in the prayer clause. Therefore, the present application be allowed by inserting the necessary contents in prayer clause regarding removal of the high tension electric line and appointment of Commissioner in the event of failure by the defendants. The proposed amendment will not change the nature of suit, it will not cause any prejudice to the other side and therefore, the same may be allowed.

2. The defendant No.1 and 2 have filed their reply to the present application at Exh.62 and resisted the contention of plaintiffs, on the ground that, the amendment application is illegal. Further, they submitted that the cause of action for the present suit has been showed as on 22/07/2011 and after that vide order passed

below Exh. 42 on 04/11/2016, the plaintiffs carried out necessary amendment in respect of placement of the electric poles No. 30 & 31 in the plaint and they are not as per the sanctioned plan. After that amendment, issues have been framed at Exh.52 and therefore, the proposed amendment is not within the limitation. It also shows that the plaintiffs were not due diligent in conducting the matter. Already, the trial has commenced because the plaintiffs have filed evidence on affidavit at Exh.60. Hence, the present application could not be allowed, it will change the nature of suit because by the proposed amendment the plaintiffs are claiming relief of mandatory injunction of removal of the electric poles. If the present amendment is allowed, it will cause prejudice to them. Already, while erecting the electric poles all the possible precaution was taken by the defendants that the field of plaintiffs should not be affected. For that, they have incurred huge money for erecting cut point tower. Already, the work of placing electric wires on the poles is completed and the electricity is being circulated through those wires on the said poles. By the said scheme, the problem of load shading in the vicinity has decreased and the said project is for the welfare of the common public and the defendants have invested huge amount for it. The plaintiffs have not right to challenge erection of the electric poles. Already, the Tahsildar Wai after spot inspection observed that the electric poles have not been erected from the 10 gunthas field of Gat No.488B/1. In such circumstances, the proposed amendment cannot be allowed. Hence, the application be rejected.

3. On the basis of rival submissions of both the sides and on the basis of documents available on record following points arise for

my determination, to which I record my findings with the reasons therefor.

Sr.No.	Points for Determination	Findings
1.	Whether the proposed amendment in the plaint is required to be allowed ?	Yes.
2.	What order ?	As per final order.

REASONS

4. Heard both the sides, at length. Perused the record.

As to Point No.1 and 2 -

5. The present suit has been filed by the plaintiffs for perpetual injunction with a prayer to restrain the defendants from erecting the high tension electricity line from the suit property. At that time, the plaintiffs also prayed for interim injunction in the form of temporary nature till disposal of the suit. However, it appears that the defendants have also erected the electric poles and the high tension line is now being circulated from the electric wires placed on those poles. It is also appearing that the issues have been framed at Ext.54. The perusal of said issues shows that an issue in respect of placing burden on the plaintiff to prove that the electric poles No.30 & 31 have not been erected as per sanctioned map and on wrong places has been framed. It is also a matter of record that the plaintiffs have filed their evidence on affidavit at Exh.60. Therefore, it is clear that the trial has commenced now. It is also necessary to mention

that vide order passed below Exh.44, the plaintiffs carried out necessary amendment in the plaint in respect of erection of said electric poles by inserting para No.4A and 4B. However, at that time they did not amend the prayer clause. Now, by this proposed amendment they wish to amend the prayer clause by inserting the additional relief of mandatory injunction regarding removal of those electric poles.

6. Ld. Advocate Mr. Shinde for the plaintiff vehemently argued that during pendency of present suit, the defendants have carried on the work of erection of electric poles. In fact, it was excepted from them not to do such an act without obtaining permission of the Court. By the said act, the application for temporary injunction moved by the plaintiffs also became infructuous. This is a suit for the year 2011 and therefore, for the speedy and correct decision on merit, the proposed amendment be allowed.

7. It is pertinent to mention that at the time of carrying out amendment in accordance with the order passed below Exh.45, the plaintiffs had an opportunity to amend the prayer clause. However, for the reasons known to them, they did not carry out the same. Therefore, it is clear that the plaintiffs were not due diligent. However, considering the nature of suit and the specific prayer of perpetual injunction in respect of restraining the defendants from erection of the electric poles, the proposed amendment is necessary for the proper adjudication of real controversy between the parties. Moreover, the proposed amendment will not change the nature of

suit because earlier it was filed for perpetual injunction and now by the proposed amendment the plaintiffs are claiming its removal because already the defendants have carried out the work of erection. Still, the plaintiffs not being due diligent, they have to pay the amount of cost so as to compensate delay and negligence caused by them. In view of this, I answer point No.1 in affirmative and in answer to point No.2, the following order is passed.

ORDER

1. The application (Exh.58) is hereby allowed subject to payment of cost Rs.1,000/- (Rupees One Thousand only).
2. On payment of cost, as above, the plaintiff to carryout necessary amendment in plaint till next date without fail.

Dictated and pronounced in the open Court.

Place : Wai
Date : 05.12.2022.

(R.M. Bhende)
Jt. Civil Judge Junior Division,
Wai, Dist. Satara.

CERTIFICATE

“ I certify that this Order uploaded is a true and correct copy of original signed Order”.

Order dictated on : 05.12.2022.

Order checked and signed on : 05.12.2022.

Uploaded by : S. S. Kumbhar.
Stenographer (Grade-III)

Uploaded on : 08.12.2022.