

CNR NO.MHSCA2-000462-2018

IN THE COURT OF SMALL CAUSES AT MUMBAI
ORDER BELOW EXHIBIT-38
IN
RAD SUIT NO.221 OF 2018

Tejkumar Mathuraprasad Dikshit Plaintiff

Versus

Arvind Kothari & Anr. ... Defendants

Appearance:

Shah Harita Milan, Ld. Advocates for Plaintiff.

K R Parekh and Co., Ld. Advocate for Defendants.

Coram :P. V. Kulkarni
Judge,C.R.No. 17
Date :20.03.2024

ORDER :

This is an application filed by the plaintiff for amendment in the plaint. Reply is filed by the defendant at Exhibit-39 and thereby resisted the application. Rejoinder is filed by the plaintiff at Exhibit-40.

2. Perused the application as well as say and rejoinder. Heard both the ld. Advocates for respective parties.

3. It is the contention of plaintiff that, the suit is filed for declaration of tenancy rights in respect of the suit premises against the defendants as described in the plaint. The defendants have filed their written statement. Issues are framed. During the pendency of the suit, plaint was amended as per the order dt.23.12.2021 at

Exhibit-24. Defendant No.1 being tenant of the suit premises was joined as party to the suit. Defendant Nos.1 and 2 have filed their written statement and additional written statement respectively.

4. It is further contended that, the written statement and additional written statement reflect that the defendant No.1 has surrendered his tenancy rights in favour of defendant No.2 during the pendency of the suit. Recently, on or about September – 2023, the plaintiff came to know that defendant No.2 has created a new tenancy in favour of one Milan Plastics and they have affixed their board above the suit premises. The photographs are filed on record. Due to this subsequent event, plaintiff has become the direct tenant of defendant No.2 after surrender of tenancy rights by defendant No.1. But, defendant No.2 is not issuing the rent receipts in his favour. Vide letter dt.08.08.2023 addressed to defendants through advocate, plaintiff had called them to give inspection of the original documents regarding surrender and transfer. But, the letter is not responded. In such facts and circumstances occurred during the pendency of the suit which go to the root of the matter, those are necessary to be added in the plaint. Trial yet not commenced. Hence, prayed to allow the amendment as per the schedule annexed with the plaint.

5. Per contra, according to the defendant No.2, he has filed written statement and additional written statement and denied the claim of the plaintiff. It is pleaded that, the plaintiff has failed to describe the suit premises. It is specifically pleaded that, one Kantilal was the tenant in respect of the Shop No.1 on ground floor and there is one othla in front of the said shop, Kantilal has constructed one padli

on the said ota and there is a space about 110 sq.ft. below the said padi having height of 5 ft. The tenancy of the shop No.1 is no way concerned with the suit premises. Therefore, Kantilal by registered deed of surrender of the tenancy dt.18.12.2019 has surrendered the tenancy rights and possession of the shop No.1 and is not concerned with the suit premises. Therefore, the contention of the plaintiff that he become the direct tenant, cannot be accepted. Kantilal was not tenant of the suit premises.

6. It is further stated that, the application for rejection of the plaint has been rejected with the observation that, the plaintiff can amend the plaint. However, the plaintiff has not done the same. The creation of new tenancy by defendant No.2 in favour of Milan Plastics is denied. Subsequent event is denied. Hence, prayed to reject the application.

7. Rejoinder at Exhibit-14 is nothing but denial of the reply and prayer to allow the application.

8. The ld. Advocate for the plaintiff has relied upon following judgments:-

1. Sampath Kumar V/s Ayyakannu and Anr reported in (2002) 7 SCC 559.
2. Shri Rajaram Naik V/s The state of Goa & Ors reported in 2016 (1) ALL MR 5.
3. Teodolinda Dias Mandoly C. Viegas and Ors V/s Laurie Hermegeild Pereira and Ors reported in 2013 (5) Mh.L.J. 822.
4. Shantabai wd/o Natthuji Thakre V/s Vasant s/o Shyamraoji Wankhede and Ors. Reported in 2015 (1) Mh.L.J. 636.

5. Life Insurance Corporation of India V/s Sanjeev Builders Private Limited and Anr reported in 2022 SCC OnLine SC 1128.

9. The ratio laid down in the above judgments is that the amendment can be allowed before commencement of the trial and court has to take liberal view while deciding the amendment application at pre trial stage. It is also observed that, to avoid multiplicity of the suit, amendment has to be allowed. We have to consider the present application in the light of above observations.

10. I have gone through the entire record. Record itself shows that, the suit is filed for declaration of tenancy rights. The suit premises is described as 345, Samuel Street, Vadgadi, Mumbai-400003. The defendants have denied the claim of the plaintiff. The issues are framed at Exhibit-22. The fact in issue is as to whether the plaintiff is having tenancy rights in the suit premises. According to the plaintiff, during the pendency of the suit, the defendant No.2 has created new tenancy in favour of Milan Plastics and such board is affixed above the suit premises. The plaintiff has also enclosed the photographs alongwith the application in that regard. According to the plaintiff, it is subsequent event and therefore it has to be added in the plaint. The defendant No.2 has denied the same. He has also denied the description of the suit premises itself. All these aspects are required to be considered at the time of trial. Plaintiff has to show the exact location and description of the suit premises in the evidence. At this stage, what is necessary to be looked into is as to whether the amendment is necessary and whether it can be incorporated in the pleading in the plaint.

11. The amendment sought is subsequent event according to the plaintiff. It can be accepted in view of the documents annexed with the application. The plaintiff intends to bring on record the subsequent event of alleged creation of new tenancy in the suit premises. As stated above, it has to be proved. But, no hurdle to allow the amendment in that regard. The proviso to the provision under Order VI Rule 17 of the Code of Civil Procedure, 1908 will not be the hurdle to allow the application being subsequent event. No harm or prejudice will be caused to the defendant if the amendment is allowed as the defendant No.2 will get the opportunity to file additional written statement in that regard. Nature of the suit will not be changed. Admittedly, the plaintiff has not filed affidavit of evidence yet. Therefore, the amendment can be allowed. Hence, I pass the following order:-

ORDER

1. The application is allowed.
2. Plaintiff is permitted to carry out the amendment as per the schedule.

Mumbai
Dt.20.03.2024

(P. V. Kulkarni)
Judge, C.R.17