

MHAH050011722020



R.C.S. No. 37/2020.

Chakradhar Mahanubhav Ashram

Vs.

Sudeshbhai Guru Baleraaj Aradhe and others.

ORDER BELOW EXH.70

This is an application of the plaintiff under Order-6 Rule-17 of Civil Procedure Code r/w Order I Rule 10, 151 of Civil Procedure Code for amendment of the pleadings and for addition of plaintiffs as parties to the suit. The original suit is filed for declaration and perpetual injunction.

02. The plaintiff in support of the application has submitted that by way of present suit he has challenged the sale deed executed by defendant nos. 1 and 2 in favour of defendant no.3. The consequent perpetual injunction is also prayed for. At the time of filing of the suit, the suit property was not included in trust properties before the Assistant Charity Commissioner, Ahmednagar. The change reports dated 21.06.2021 and 15.03.2022 were initiated in respect of the suit property and accordingly the suit property is included in the trust properties. Even, the trustees of the plaintiff trust i.e. Chakradhar Mahanubhav Ashram are noted in the said change report. The registration certificate is also issued by the concerned authority, accordingly. Therefore, these developments, which have taken place after filing of the suit are required to be brought on record of the proceedings. Therefore, he prayed for allowing the application.

3. The defendants vide their say to the application at Exh.72 denied and disputed the contention of the plaintiff. According to them, the application is filed without any legal basis. The application suffers from suppression of facts. The suit is filed in the year 2020 and the said change report was also submitted in the year 2020 and therefore, the contention of the plaintiff that, it is an event which had taken place after filing of the suit, is not tenable. Accordingly, they prayed for rejection of the application.

4. Considering the rival pleadings and documents produced in support thereof, following points arise for my determination to which I record my findings thereon for reasons to follow :-

<u>Sr. No.</u>	<u>POINTS</u>		<u>FINDINGS</u>
1)	Whether the proposed amendment is just and proper in the facts and circumstances of the case ?	..	In the affirmative
2)	Whether the application of the plaintiff deserves to be allowed ?	..	In the affirmative
3)	What order ?	..	Application is allowed.

REASONS

5. Heard learned Counsel for both the parties.

POINT NOS.1 AND 2:-

6. Order-VI Rule-17 confers wide power upon the Court to allow either party to alter or amend his pleadings at any stage of the

proceedings. The guiding factor for such exercise of the power is the determination of real questions in controversy between the parties. This power is limited by the proviso to Order-VI Rule-17 of Civil Procedure Code which provides that the application can not be allowed after commencement of trial, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

7. A perusal of record shows that the hearing of the suit has already commenced. Therefore, the amendment is governed by the proviso of Order-VI Rule-17 of Civil Procedure Code. Therefore, the criteria for deciding the application is that of the due diligence in filing the application for amendment. It is clear from record that the suit is filed for declaration and perpetual injunction. According to the plaintiff, during pendency of the suit the change report of the plaintiff trust is filed before the Assistant Charity Commissioner, Ahmednagar. As per the said change report the proposed plaintiff nos.2 to 7 are shown as office bearers and trustees of the original plaintiff. The said change report is certified by issuing registration certificate after filing of the suit i.e. on 21.06.2021. This is a development which has taken place during pendency of the suit. Therefore, it is clear that, the amendment has become imperative and necessary in the facts and circumstances of the case. There is nothing on record to show that the plaintiff has not acted diligently in filing the application. Therefore, it deserves to be allowed. Accordingly, I answer point Nos.1 and 2 in affirmative and proceed to pass following order :-

ORDER

1. Application Exh.70 stands allowed.
2. The plaintiff is directed to carry out the proposed amendment in the pleadings within 15 days.
3. The plaintiff shall produced the amended plaint forthwith after carrying out the proposed amendment, if any.
4. The defendants are at liberty to carry out consequential amendment to their written statement, if any.

Date: 25/07/2024

(R.B.Giri)
Civil Judge Sr. Division,
Shrirampur.