

Order below Exh.97 in R.C.S.No.103/2012.

1. The plaintiff has filed this application and stated that during the continuation of the status-quo order the defendants have violated the order. The defendants carried out the construction. Therefore the plaintiff wants to amend the plaint. He has given the proposed amendment valuation of additional Rs.1,000/- and additional claim of mandatory injunction. He wants to insert the Para no.5-A regarding the violation of the order, carried out construction, filing of the report for section 188 of the Indian Penal Code and charge-sheet. He also wants to amend the Para no.7 regarding mandatory injunction and wants to add prayer of mandatory injunction for removal of the said construction on the land of the plaintiff. The plaintiff claims that the proposed amendment is necessary. It is not changing the nature of the suit. The plaintiff prayed for allowing the amendment.

2. The defendants have filed their say at Exh.104. They have denied all the contents of the application. They claim that the application is not filed within limitation. They have filed the written statement and counter claim on 12/04/2010 and in Para no.8, 11, 12, 13 and 15 they have claimed the possession over the suit property. They have claimed that as per section 6 of the Specific Relief Act the plaintiff ought to have filed the application within six months from the dispossession. They have claimed their possession prior to filing of the suit. One suit was instituted by the mother of the plaintiff. In that suit the measurement was carry out and the map was prepared. They have claimed that in the map by Red Colour the area of the defendants is shown. Therefore, the application is not tenable one. Hence they

prayed for rejecting the application.

3. From above facts following points arise for my determination and I have recorded my findings thereon followed by reasons.

POINTS

1. Whether the present amendment is necessary to resolve the dispute ?
2. What order ?

FINDINGS

Yes.

As per final order.

REASONS

4. Heard learned counsels for the parties. Learned counsel for the plaintiff relied on A- **Shahikant Jaganath Powar V/s. Baburao Huvappa Kurhade (deceased) through L.Rs. and ors., reported in 2013 (3) ALL MR 259.** In this case as per Section 22 of the Specific Relief Act the plaintiff filed the application for amendment and claimed the relief of possession as consequential relief. The suit is relating to the Specific Relief Act. The said amendment is allowed.

B- **Kahini Developers Pvt. Ltd., V/s. Mukesh Morarji Panchamatia and Ors., reported in 2013 (3) ALL MR 802.** In this case the application for amendment was filed much after 3 years when right to apply accrued. As per Sections 21(5), 22(2) of the Specific Relief Act the amendment can be made at any stage of proceedings. The application for amendment must be distinguished from cause of action, which is sought to be set up by amendment. Though

application for amendment is allowed, question in limitation would have to be determined and adjudicated in the suit.

C- **M/s. Sultanabad Villa Co-operative Housing Society Ltd. and Ors. V/s. M/s. Mazda Construction Co. and Ors., reported in 2014 (7) ALL MR 212.** The amendment application is rejected on the ground of same being barred by Limitation under Section 527 of MMC Act. It is held that issue of limitation arising in respect of relief which is based on amendment which is sought in plaint, said issue can be kept open for being adjudicated at appropriate time and held that rejection of the application is not proper.

D- **Shree Vardhaman Stanakvasi Jain Shrivak Sangh V/s. The Municipal Corporation of Gr. Mumbai and Ors., reported in 2015 (3) ALL MR 893.** In this case the application is filed for amendment in the Writ Petition. There is no concept of "trial" in writ proceedings. The final hearing is yet to begin Therefore the amendment is allowed.

5. Learned counsel for the defendants relied on A- **Girish s/o. Bapusaheb Bhor V/s. Ambadas s/o. Chandrabhan Perne, reported in 2015 (1) ALL MR 16.** In this case the amendment of written statement was sought, the defendants in their pleading already reserved a right to file amendment application, in the event TILR is appointed as Court Commissioner. T.I.L.R. was appointed and he filed his report. But the defendant took 4 years and 3 months to file the amendment application after report. It is held there is no cause of the defendants. There is not fact that the defendants are unaware of the situation. The defendants have not given any explanation of the delay

more than 4 years. The defendants are not diligent. Therefore the rejection of the amendment application is proper.

B- Dnyandev Ramlal Patil V/s. Sanjeev Bhavlal Patil and Ors., reported in 2014 (6) ALL MR 657. In this case by the amendment subsequent event of forcible dispossession of plaintiff is sought to be brought on record. The defendants had declared that they were in possession through their written statement. The amendment application filed 7 years after filing of written statement by defendants. In the application it is nowhere pleaded, as to when did plaintiff acquire knowledge of his possession and as regards due diligence on his part in bringing this to notice of the Court at earliest. There was laxity, negligence and lack of due diligence on part of plaintiff. Hence rejection of the application is proper.

6. I have perused plaintiff and written statement with counter claim. The plaintiff has instituted the suit being the owner of the suit property. Therefore the provision of Section 6 of the Specific Relief Act as claimed by the defendant is prima-facie is not applicable to the present matter. Likewise, as stated in the above cited case laws the issue of the limitation can be kept open and the amendment application can be considered.

7. The second objection of the defendants is that they have filed counter claim on 12/04/2010 at Exh.26. I have perused the said counter claim and they have claimed the adverse possession. In the Para no.12 they have stated that prior to filing of the suit they have carried out the construction of Hotel and other repairing. Along with list

Exh.73 the plaintiff filed the copy of spot panchanama and charge-sheet. The said incident is occurred in the year 2010. In the present matter the plaintiff has not disclosed why he has taken such long period to file this application. The suit is old one. It is registered in the year 2010. In the present matter the defendants have claimed the adverse possession. Their adverse possession is required to be decided as per law. By this amendment the plaintiff wants to add the claim of mandatory injunction. The plaintiff is apparently negligent and he has not filed the application for amendment within reasonable period. After the incident the crime was registered for carrying construction in violation of temporary injunction. So the point of limitation is kept open. The counter claim of the defendants for adverse possession is required to be determined as per law and the proposed amendment is relating to the said dispute of possession. To avoid multiplicity of litigation it is just to decide it. The plaintiff is negligent. Therefore it is required to impose the heavy cost. The plaintiff is also liable to pay the Court Fee as per rules for additional prayer of mandatory injunction. The defendants will get an opportunity to file the additional written statement for amended plaint. Hence, it is just to imposed the cost of Rs.3,000/-, which is payable within 15 days without failure. Otherwise plaintiff is not entitled for continuation any discretionary relief. Hence the proposed amendment is just to allow deciding the matter on merit. The proposed amendment is not changing the nature of the suit. As per claim of the plaintiff, the alleged incident occurred during the pendency of the suit. Hence I am inclined to answer the point no.1 in the affirmative and pass following order.

ORDER

1. The application is allowed subject to the payment of Rs.3000/- to the defendants within 14 days from the date of order. The case is old one. NO further adjournment will be granted.
2. As the matter is old one, plaintiff is directed to carry out the amendment within 14 days by paying additional C.F. as per rules and file amendment plaint, without failure and get decide the temporary injunction without any negligent on his part.

Date :-01/08/2015.

(P.V.Bulbule)
Civil Judge, Senior Division,
Newasa.