

1. Eknath Dnyandev Ghute Plaintiffs

Versus

1. Gulab Dattu Ghute Defendants

ORDER BELOW EXHIBIT 32

1. The suit is for perpetual injunction. The plaintiffs have filed the application for amendment of plaint as per the provisions of Order 6 rule 17 of Code of Civil Procedure vide exhibit 32. The plaintiff has stated that, the plaintiff and his father are cultivating suit land from 1953-54. Therefore, the plaintiffs have become owner of suit property by way of adverse possession. Now, the plaintiffs want to plead theory of adverse possession alternatively. Hence, it is necessary to insert paragraph 7A, 11A-1 in the plaint.
2. The defendants have filed his say and raised strong objection to the application. Defendants have stated that, application is not legal. Suit is fixed for hearing. There is total change by way of amendment. Hence, application be rejected.
3. Upon hearing of both sides and on perusal of exhibit 32 and say of defendants, the following points arise for my consideration –

Sr. No.	Points	Findings
1.	Whether proposed amendment will change nature of suit ?	No.
2.	Whether proposed amendment is necessary to decide real dispute between parties ?	Yes.
3.	Are Plaintiffs entitled for relief of amendment ?	Yes.
4.	What is Order ?	The application is allowed.

REASONS

As to point number 1 to 4 –

4) The point number 1 to 4 are interlinked with each other. I have clubbed point number 1 to 4 together and discussed accordingly. The suit is for declaration and perpetual injunction. The plaintiff has filed the application at exhibit 32 for amendment of plaint as per the provision of Order 6 Rule 17 of Code of Civil Procedure.

5) On perusal of application vide exhibit 32, it reveals that, plaintiffs have prayed for theory of adverse possession alternatively. I have perused Order 7 Rule 7 of Code of Civil Procedure. It reveals that, every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative. Therefore, it becomes clear that, there can be alternative pleading. At this juncture, recourse must be taken to order 6 Rule 17 of Code of Civil Procedure. The gist of Order 6 Rule 17 of Code of Civil Procedure says that amendment must be necessary for the purpose of determining real questions in controversy between the parties. The amendment in the pleading must be in just terms.

6) The plaintiffs have stated that, amendment is necessary, if it is not done so then it may result in injustice to plaintiff in future. Hence, application vide exhibit 32 may be allowed. The defendants will get opportunity to put forth their defence in future.

7) In view of court, the nature of proposed amendment is not causing any change in the nature of claim of suit. It will not damage or change the nature of suit, rather the amendment will sort out the dispute between parties. It seems that, the proposed amendment is bona fide one. The proposed amendment is necessary for the purpose of determining the real questions in controversy between the parties. If the application vide exhibit 32 is rejected then it may result in multiplicity of litigation. In order to avoid multiplicity of proceeding, it will be appropriate to allow the said application. The proposed amendment will help the court to adjudicate the dispute on its merit. The defendants will get the opportunity to put forth their defence.

8) In the view of the court, if proposed amendment is allowed, it will not cause prejudice to defendants. The proposed amendment will not affect rights of defendants. The defendants will get the opportunity to put forth their defence if amendment application is allowed. Therefore, plaintiff can very well amend the suit at this stage. Hence, application vide exhibit 32 is very well maintainable. The terms of amendment are just. Therefore, after considering the provision of Order 6 Rule 17 of Code of Civil Procedure and in view of above facts & circumstances, the application is very well maintainable.

It is just & proper to allow application in the interest of justice. In the result the following order is passed.

ORDER

1. The application vide exhibit 32 is allowed.
2. The Plaintiffs are to carry out amendment on or before the next date.
3. The plaintiffs must file the copy of amended plaint on or before next date and hearing of the suit is to proceed further in accordance with provisions of law.
4. There is no order as to cost.

Shrigonda
Date -13/09/2022

Sd/-
Smt. K. A. Katkar
Joint Civil Judge(J.D)
Shrigonda.

:-CERTIFICATE:-

I affirm that, the contents of this pdf file order are same,
word for word as per original order.

Case No.	:-	R.C.S. No. 97/2016
Name of Stenographer	:-	Smt. S. V. Jadhav
Court Name	:-	Smt. K.A.Katkar, Jt. Civil Judge, J.D.& J.M.F.C, Shrigonda.
Date of Decision	:-	13/09/2022
Order signed by P.O. on	:-	13/09/2022
Order uploaded on	:-	13/09/2022