

Spl.C.S.No.18/2024
Pukhraj Vs. Maruti & Ors.

ORDER BELOW EXH.14

(Passed on 24st day of February, 2025)

This is an application filed by the defendant no.1 and 4 for amendment of their written statement vide Order VI Rule 17 of the Code of Civil Procedure, 1908 (in short 'CPC').

2. In this application it is contended by the defendant no.1 and 4 that, they are having their permissive possession over the suit property since very longtime. Since longtime plaintiff did not create any obstruction to the peaceful possession of the defendant no.1 and 4 over the suit property till the filing of this suit. Defendants have obtained the water and electricity connection in the suit property with consent of plaintiff, when defendant no.1 and 4 were taking water and electricity connections, at that time plaintiff did not raise any objection. The notice given by the plaintiff under Tenancy Act is false. The plaintiff has taken inconsistent pleas in plaint, at one side he has contended that the defendants have done encroachment over the suit property and at other side he has contended that the defendants have received the possession of said suit property as licensee. Therefore, with intent to bring said fact in the written statement of defendant no. 1 and 4, they want to amend their written statement by adding paragraph no. 9A in their written statement. The defendant no. 1 and 4 have further contended that, due to proposed amendment nature of the suit will not be changed and the proposed amendment is necessary for the sake of natural justice. So, this application be allowed as sought.

3. The plaintiff has strongly opposed this application by filing his say at Exh.15. In his say he has contended that through proposed amendment the defendant no. 1 and 4 want to change their earlier admission. In their written statement the defendant no. 1 and 4 had admitted that they have constructed kud house and tin shed in the suit property. But through the proposed amendment they want to mention in their written statement that they have constructed pucca house, but the said contention is contrary to the earlier admission. Therefore, this application is liable to be rejected. The plaintiff has further contended that the contention about the tenancy notice is also unborn by the record, therefore, the proposed amendment in respect of such notice is also not permissible. Therefore, this application be rejected.

4. Heard the learned respective Advocates of both sides at length. The learned Advocate of the defendant no.1 and 4 has submitted that, yet the trial of this suit is not commenced. Even issues are not yet framed. For the proper adjudication of dispute the proposed amendment is necessary. The proposed amendment is not at all for raising inconsistent pleas or for taking away the earlier admission. So, this application be allowed.

5. Contrary the learned Advocate of the plaintiff has submitted that, through proposed amendment the defendant no. 1 and 4 want to introduce an entirely different case, if proposed amendment is allowed then it will cause great prejudice to plaintiff. Therefore, this application be rejected. In support of his submission he has relied on the judgment delivered by the Hon'ble Apex Court in the case of **Modi Spinning & Weaving Mills Co. Ltd. & Vs. Ladha Ram & Co, 1977 AIR 680**. Wherein it is held by the

Hon'ble Apex Court that, *"inconsistent pleas can be made in pleadings. But the defendants cannot be allowed to change completely the case and substitute an entirely different and new case."*

6. On going through the overall record and submissions, it is very clear that, the plaintiff has filed this suit for the recovery of possession and damages. In this suit the plaintiff has contended that, he has permitted to the defendants to reside in hut. Now the plaintiff has contended that, by issuing notice dated 16.02.2024 the plaintiff has revoked the permission and license given to defendants. In their written statement the defendant no. 1 and 4 had also mentioned that they have constructed their house of mud walls and tin shed over the suit property and since last 35-40 years they are residing in the said house. Through proposed amendment the defendant no. 1 and 4 just want to additionally mention that they have taken the water and electricity connections in the suit properties and the plaintiff had not taken any objection at the time of obtaining the said connections. Therefore, it is very clear that through proposed amendment the nature of the suit will not be changed. Further it appears that, through proposed amendment the defendant no. 1 and 4 do not want to substitute an entirely different and new case. Further in view of ratio laid down in the case law 1977 AIR 680 (supra) it is very clear that, inconsistent pleas can be made in pleadings but said inconsistent pleadings shall not substitute an entirely different and new case. In present suit through proposed amendment defendant's case will not be completely changed, but if the proposed amendment is allowed then it would be very helpful for the proper and complete adjudication of dispute. It

appears that, the proposed amendment is necessary for complete determination of the controversy between the parties of this suit. In such circumstances, this application deserves to be allowed as sought. But while allowing this application it needs to be considered that the defendants had an opportunity to raise the proposed contentions in their written statement Exh. 12 while filing such written statement on record. In such circumstances sufficient costs needs to be awarded to the plaintiff. Hence, I pass the following order.

ORDER

1. The application Exh.14 is hereby allowed subject to condition that the defendant no. 1 and 4 shall pay the costs of Rs. 1,000/- (Rs. One Thousand only) to the plaintiff on or before next date of this suit.
2. After compliance of above direction the defendant no. 1 and 4 shall amend their written statement on or before next date of this suit.
3. After carrying out the amendment in written statement, the defendant no. 1 and 4 shall produce the copies of amended written statement on record on or before next date of this suit.

Date : 24/02/2025.

(Mahesh S. Kale)
Civil Judge (Sr. Dn.),
Akot.