

MHAU060005982006



R.C.S./600077/2006

Bizalabai Wo Bhaskar Aher Vs. Devidas Namdeo Ziman

ORDER BELOW EXHIBIT 212 IN REGULAR CIVIL SUIT NO. 77 OF
2006

1. The present application is filed below on behalf of the Defendant number 1 and 5 inter alia for seeking amendment in the written statement.

2. The Defendant number 1 and 5 have averred that the Plaintiff and Defendant number 2, 3, 6, 7 and 10 to 14 are in collusion with each other. They have filed the suit only with the intention to harass the Defendant number 1 and 5. The suit was filed about different properties situated in Adgaon and Jeur for the sake of partition. The Defendants have appeared through Advocate and filed their written statement at Exhibit 35.

3. During the pendency of the suit the Defendant number 3, 12, 13 14 and others have alienated the suit properties without the permission of the Court. Thus, it has become necessary to amend the written statement. Such amendment includes facts about alienation made on 17.01.2008 by the Defendant number 3 to Defendant number 14, by the Defendant number 14 to the Defendant number 13 on 23.01.2014, by Chaaya Ziman on 07.01.2019, 08.03.2019, 29.06.2020, 03.03.2023 etc. Such transactions are about different suit properties made by the parties to suit and different person. The proposed amendment also includes facts about other suit filed in the Court of Vaijapur.

4. Thus, as the suit is for partition it is incumbent on the part of the Defendant to bring such facts about suit properties. Hence, it is necessary for the Defendants to amend the written statement. Thus, it is prayed to allow the Application for the sake of proper adjudication of the suit.

5. The Plaintiff has filed say below Exhibit 224 and resisted the application. It is his contention that the application is misconceived and not tenable at law. It is based on ill-grounds. The Defendant number 1 and 5 have not come with clean hands. The application is not tenable in view of the amended proviso of Order 6 Rule 17 of the Code of Civil Procedure, 1908. It is further submitted that the Defendants have made incorrect statements with respect to the so -called transactions. The proposed amendment is said to be unnecessary and made only with the intention to prolong the matter. The Defendants do not have any legal grounds to pray for the proposed amendment. Hence, it is prayed to dismiss the Application with heavy costs.

6. I have heard the arguments advanced by both sides. I have gone through the record of the case. It is apparent from the record that many events have occurred since the inception of the suit. It also seems that the one of the Defendant has transposed herself as Plaintiff during the pendency of the suit. It is also apparent that the Plaint is amended several times and even new suit properties were also included time to time. The Plaintiff is extended such opportunity to amend his pleadings.

7. It further appears that the Defendants have produced the relevant documents on record which shows that such transactions as contended by the Defendants appear to have prima facie occurred. Also, when the suit is for partition, it is a settled law that all the parties are Plaintiff and they can take all such valid objections about the properties in dispute.

8. Moreover, it is also settled law that the amendment to the written statement shall be considered liberally than amending a plaint. The facts clearly show that during the pendency of the suit the parties have entered into many transactions and as a result the parties have right to set out their pleadings with respect to the same. Such transactions appear to be done during the pendency of the suit. Hence, the amendment can be certainly considered for facts which have occurred subsequently.

9. The learned Advocate for the Plaintiff has relied on the authorities by Hon'ble Bombay High Court in the case of Urban Infrastructure Trustees Ltd. Vs. Joyce Realtors reported in 2024 0 Supreme (Bom) 400 wherein it is held that the amendments can be allowed at any stage of the proceedings but they shall not cause prejudice or injustice to the other side. The amendment in the said case was allowed on payment of heavy cost. The next authority relied by him is also of the parent High Court in the case of Arjun Bhagwath Shinde Vs. Pandurang Yadav Tat decided in WP no, 12928 of 2017 wherein it is held that the amendment to pleadings after the commencement of the trial are only permitted if the facts could not have been brought on record despite of due diligence.

10. Upon considering the above authorities and the facts in the present case it appears that as the amendment is about subsequent events the law laid down in the said authorities is not helpful to the Plaintiff. On the other hand, it is apparent that such amendment in the written statement is necessary for the effective adjudication between the parties. In such situation, the amendment deserves to be allowed as there was no point when all such facts could have brought on record at once. While considering the due diligence it is also necessary to see that the reason for such amendment is other parties and about them the allegation of

collusion with Plaintiff is also a ground. Hence, when all parties are at equal footings, I do not find it appropriate to award any costs too. Also, such amendment will not cause any prejudice or irreparable loss to the other parties as such amendment is necessary for the proper adjudication of the dispute between parties.

11. Hence, on the basis of the reasons mentioned hereinabove, I pass following order:-

- a. The application is allowed.
- b. The Defendants shall carry out the amendment on or before next date and provide amended copy of written statement.
- c. The matter is time bound, hence it is expected that the compliance of this order is done forthwith.
- d. Costs in cause.

21 October 2024

Vinayak Dattatray Patil
Civil Judge Junior Division, Kannad