



ORDER BELOW EXH.54 IN R.C.S.NO.16 OF 2013

(Waseem Ansari Vs. Abdul Latif)

1. Plaintiff has filed this application for amendment of plaint.
2. Plaintiff has submitted that he has filed this suit for perpetual injunction restraining defendants No.1 to 7 from raising any sort of construction over the suit property and also from changing the nature of suit property and also for mandatory injunction. Plaintiff has submitted that defendant has contended in his written statement that this suit is not maintainable without seeking the relief of declaration. Hence plaintiff wants to amend his plaint to claim the relief of declaration. This amendment is necessary for fair disposal of suit. Hence plaintiff has prayed that he be permitted to amend his plaint.
3. Defendants have filed their reply at Exh.54-A. Defendants have strongly opposed this application. The defendants have submitted that this suit is filed in the year 2013 and written statement has been filed in June 2013 pointing out the inherent defects in the suit. The plaintiff has filed this application after delay of 6 & 1/2 years. Hence this application is barred by limitation. Relief of declaration has to be claimed within 3 years of accrual of cause of action. In the present case trial has already commenced. Plaintiff has failed to give reason for delay. Hence this application is liable to be rejected.
4. I heard Ld. counsel for the parties. **Ld. counsel for defendants has relied on following case laws.**
 1. **Vidyabai Vs. Padmalatha & Another, 2009 AIR(SC) 1433,**
In this case, it is held by Hon'ble Supreme Court that jurisdiction of

court to allow amendment is taken away after trial has commenced.
This case law is applicable to facts of the present case.

2. **Prakash Vs. Bhika, 2010(1) Mh.L.J.810.**

This case law reiterates same ratio as mentioned in preceding case law.

3. **Sasa Detergent Division Vs. Damodar S. Mudliyar & others, 2012(2) Mh.L.J.15.**

In this case it is held by Hon'ble Bombay High Court that delay in filing of amendment application should be satisfactorily explained.
This case law is applicable to facts of the present case.

4. **J. Samuel & others Vs. Gattu Mahesh & others, 2012(4) Mh.L.J.40.** This case law reiterates same ratio as mentioned in preceding case law.

5. **Chakreshwari Construction Pvt. Ltd. Vs. Manohar Lal, 2017(5) Mh.L.J.195.** This case is not applicable to facts of the present case.

6. **Amartya Surendra Deshmukh & Another Vs. Sheela Rameshrao Deshmukh & others, 2018(5) All M.R.878.**

In this case it is held by Hon'ble Bombay High Court that as a general rule, the court should decline the amendment if fresh suit on the amended claims would be barred by limitation on the date of application.

This case law is applicable to the facts of the present case.

7. **Indrabhan & Others Vs. Maanvati & Others, 2017 AIR CC 2599.**

In this case it is held by Hon'ble Madhya Pradesh High Court that

plaintiff is seeking amendment of plaint to challenge sale deed after 5 years of filing of suit. Petitioner was aware of sale deed on the date of filing of suit for injunction. No sufficient reason is given for not challenging sale deed in original suit. Hence, application for amendment is barred by limitation.

This case law is applicable to facts of the present case.

5. In the present case issues are framed on 21.08.2019. Now case is fixed for evidence. Plaintiff has filed this suit for perpetual injunction and mandatory injunction on dated 06.02.2013. Plaintiff has filed this application for amendment of plaint on 26.09.2019. There is delay of near about 6 years in filing of this application. Limitation for claiming relief of declaration is 3 years. Hence relief of declaration is barred by limitation.

6. This case is already for recording of evidence. Hence I consider that this application is not tenable at this stage of proceeding. In case this amendment application is allowed, it will change the nature of suit and will cause serious prejudice to defendants. They will be required to face time barred claim. Hence I consider that this application is liable to be rejected. Therefore I pass this order.

Order

This application is hereby rejected with costs.

Date : 06.12.2021

(Smt. S. N. Morwale)
Civil Judge (Senior Division)
(MCA Court) Aurangabad.

CERTIFICATE

I affirm that the contents of this P.D.F. file Order are same, word to word,
as per the original Order.

Name of the Stenographer	: Varsha Ajit Andurkar
Court	: C.J.S.D. (Corporation Court), Aurangabad
Date	: 06.12.2021
Order signed by the presiding officer on	: 06.12.2021
Order uploaded on	: 06.12.2021