

ORDER BELOW EXH.NO. 63

1] Defendants have filed this application for amendment of their written statement under Order 6 Rule 17 of Civil Procedure Code 1908.

2] As per the application, plaintiffs have filed this suit in respect of the so called road, which is not in existence and the said road is not the property of the plaintiffs. Plaintiffs are not having any concern with the road and plaintiffs have pleaded that they have filed complaint applications to Tahsildar, Kaij and so, Tahsildar, Kaij is necessary party to this suit. Plaintiffs are not having locus-standi to file this suit and from the nature of the pleading, it appears that suit is in the nature of representative suit, however, plaintiffs have not obtained prior permission of the court for filing this suit. Due to division and rehabilitation of village Bhalgaon, the position and situation of new roads can only be given by the State of Maharashtra, so in the light of above facts, defendants are willing to add pleadings in respect of Tahsildar and State of Maharashtra as necessary parties to this suit and pleading in respect of the representative nature of the suit. It is further case of defendants that due to the proposed amendment, nature of the suit will not change and plaintiffs will not suffer any loss and due to oversight, the above pleadings are not included in the written statement. So, defendants have prayed for amendment of their written statement.

3] Plaintiffs have filed their say to this application vide Exh. 65 and strongly opposed the application. As per the say of plaintiffs, the application is false and imaginary. Defendants have not given any reason for the delay. Defendants appeared in the suit and filed their written statement on 11/12/2012. Plaintiffs have filed temporary injunction application, however, in order to prolong the hearing on the said

[02]

application, defendants filed application for appointment of commissioner, which came to be rejected. Thereafter, defendants have taken adjournments on various occasions. This application is not legal one and no satisfactory reason for the delay is given. It is further say of the plaintiffs that this suit is for perpetual injunction and Tahsildar and State of Maharashtra are not necessary parties to this suit. Plaintiffs have already added all the necessary parties in this suit and so, on the above grounds, plaintiffs have prayed for rejection of this application.

4] Heard both the sides. After going through the application, say and documents filed on record, following points arrises for determination and I am giving my findings thereon, for the reasons stated therein.

Sr.
no.

POINTS

FINDING

- | | |
|---|---------------------|
| 1] Whether, the proposed amendment is necessary for decision of this suit on merits ? | In the negative. |
| 2] What order ? | As per final order. |

REASONS

5] In support of application, defendant Janak has filed his affidavit vide Exh. 64.

AS TO POINT NO.1 :-

6] Learned advocate for the defendants Shri. J.D. Chalak argued that plaintiffs have pleaded that they filed complaint applications to Tahsildar, however, plaintiffs have not added Tahsildar as a party to this suit. Plaintiffs are claiming injunction in respect of the road, which is owned by State of Maharashtra and so, Tahsildar and State of Maharashtra are necessary parties to this suit. He further submitted that this suit is in the nature of representative suit, however, plaintiffs have not obtained prior permission of the court for filing this suit. So, pleading in respect of the above facts is necessary to include in the written statement. Contrary to this, learned advocate for plaintiffs Shri. R.S. Kulkarni submitted that

defendants have filed false application and defendants are trying to prolong the matter. Plaintiffs have filed suit for perpetual injunction in respect of the common road against the persons, who obstructed plaintiffs and so, Tahsildar or State of Maharashtra are not necessary parties to this suit. This application is not tenable and delay made for filing this application is not explained. He further submitted that since beginning defendants are trying to prolong the matter and hearing on temporary injunction application and with the same intention, defendants had filed application for appointment of court commissioner, which came to be rejected and thereafter, with an intention to prolong the matter, defendants have filed this application, which is not bonafide. So, he prayed for rejection of the application.

7] In this suit, plaintiffs have prayed for perpetual injunction, as not to obstruct to the suit road, as mentioned in the plaint and map attached alongwith the plaint. The existence and contents regarding the suit road is denied by defendants in their written statement (Exh.24), which is filed on 11/12/2012. Thereafter, the court commissioner application filed on behalf of the defendants came to be rejected and the said order is confirmed in Writ Petition No. 9952/2013 by Hon'ble High Court. Thereafter, when matter is posted for hearing on temporary injunction application, at that time, defendants have filed this application.

8] Perusal of the application shows that defendants are willing to include the pleadings in respect of the non-joinder of necessary parties in their written statement and the pleading in respect of Tahsildar and State of Maharashtra as necessary parties, so also, the pleadings in respect of representative nature of the suit. However, perusal of record shows that defendants have filed their written statement on 11/12/2012 and pleadings in respect of the Tahsildar and State of Maharashtra as necessary parties in this suit for injunction, is not mentioned in the written

[04]

statement. Defendants have not included the pleading in respect of the representative nature of the suit in their written statement. Further, in the plaint, plaintiffs have not claimed their exclusive ownership over the suit road. However, it is pleaded by the plaintiffs that they are using the said cart-way since prior to sixty years and they are having right to pass on the said road. However, defendants are causing obstruction to the plaintiffs' right to pass on the said road. So, in the light of above specific pleading of plaintiffs in respect of the matter in dispute, the Tahsildar, Kaij or State of Maharashtra are not necessary parties to this suit. Merely because the said cart-way is public and it is owned by the Government, Tahsildar and State of Maharashtra do not become necessary parties to this suit for perpetual injunction. In this suit, the disputed question is in respect of the existence of the suit road and obstruction to the plaintiffs' to pass on by the said road by defendants and the said question and the dispute between the parties can be adjudicated and decided on merits without adding State of Maharashtra and Tahsildar as necessary parties to this suit.

9] Further, as per the provisions of Order 1, Rule 13 of C.P. C., defendants have to take objection in respect of non-joinder of necessary parties at the earliest and in this suit, defendants have filed their written statement on 11/12/2012. However, thereafter, no subsequent change has taken place to take the said objection again, for the defendants to file this application. Further, the reason mentioned in this application for not including the said pleading in the written statement is not satisfactory. Defendants have stated that due to oversight the pleading in respect of the proposed amendment is not mentioned in the written statement. In this suit, written statement (Exh.24) shows that defendants are not illiterate persons, but they are literate persons and defendants have not given satisfactory reason for the delay and as to why said pleadings was not included in the written statement.

10] Further, record shows that after filing their written statement and when the matter was posted for hearing on temporary injunction application, defendants have taken various adjournments and it is the objection of the plaintiffs that defendants are trying to prolong the matter, so that plaintiffs should suffer. Perusal of the record shows that court commissioner's appointment application filed on behalf of the defendants came to be rejected on 31/08/2013, however, thereafter, vide Exh. 55, 56, 62, defendants have taken adjournments for argument on temporary injunction application and when last chance adjournment was granted to them on 26/08/2014, on the next date i.e. on 20/09/2014, defendants have filed this application. Further, in the light of the real dispute between the parties, which is in respect of existence of the suit road and obstruction thereto by the defendants, the proposed amendment does not appear to be necessary for the decision of this suit on merits and in the absence of the proposed amendment, the dispute between the parties can be adjudicated and decided on its own merits. The above mentioned facts and circumstances shows that defendants are trying to prolong the matter and this application is an attempt to do the same. Further, pleading in respect of representative nature of this suit and its tenability is not incorporated in the plaint and thereafter, defendants want to include the said pleadings. So, the proposed amendment is after thought and made with an intention to prolong the matter. So, in the light of pleadings of both the parties and nature of the suit and the relief claimed, the proposed amendment is not necessary for the decision of this suit on merits. So also, the proposed amendment is an after thought and it is made with an intention to prolong the matter. Hence, I answer point No.1 in the negative.

AS TO POINT NO.2 :-

9] As I have already answered point No. 1 in the negative, so in order to answer point No.2, I proceed to pass the following order.

[06]

ORDER

Application stands rejected.

Sd/-

Dated : 08/10/2014.
Place : Kaij.

[V.A. Awaghade],
2nd Jt. Civil Judge, J.D.,
Kaij.