



R.C.A. No. 20/2024
Zubaida Nasrin + 5
X Abdul Sattar
MHBU04-000381-2024

ORDER BELOW EXH. 11

Date of Order : 16th September, 2025.

This is an application filed by the appellants/original defendants seeking permission to make proposed amendment in written statement as para Nos. 15-B and 15-C after para No. 15-A.

2. The respondent/original plaintiff has resisted the application by filing say at Exh. 13. It is contended that, present application is nothing but an abuse of process of law and procedure. The application is not maintainable in fact and in law. The appellants by filing the amendment application wants to withdraw material admissions in original written statement and such application cannot be allowed in law which will have an effect of withdrawing the application. Hence, requested to reject the application.

3. Mr. Z.B. Shaikh, Ld. Advocate for the appellants have submitted that, respondent/original plaintiff had filed the suit for specific performance of contract along with the ancillary relief against the original defendant Mohd. Haroon Shaikh Yusuf who has resisted the suit by filing

written statement vide Exh. 16 and denied all the contentions of the plaintiffs. He submitted that, during pendency of the suit, original defendant died and present appellants being his legal heirs were brought on record. Both parties have lead the evidence before the death of Mohd. Haroon. Thereafter, the trial Court has decreed the suit in favour of plaintiff. He submitted that, as per form No. 'D' the total area of suit property is 291.44 Sq. Meter which comes to 3135.90 Sq. Feet. On 20/02/2025, when appellant No. 5 verified the form No. 'D' from the Nazul Department i.e. office of Deputy Superintendent of Land Records, Khamgaon the present appellants came to knowledge that, original defendant Mohd. Haroon had sold out the open portion of the suit plot measuring 62.06 Feet X 22 Feet i.e. 1372.02 Sq. Feet on 13/11/1990 by way of registered sale deed to one Arbi Madarsa Panch Committee, Khamgaon through Shaikh Ayub Shaikh Rustam in the presence of witness Nazir Khan Gaffar Khan and Abdul Sattar Abdul Gaffar, resident of Khamgaon. He submitted that, before 20/02/2025 present appellants had no knowledge about the execution of said sale deed in favour of Arbi Madarsa. He submitted that, after getting

knowledge of said fact appellants have obtained a digital copy of form No. 'D' on 21/02/2025 and thereafter applied for certified copies of sale deed on 05/03/2025. The record and proceeding of trial Court received on 21/04/2025 and thereafter appeal was fixed for hearing on 17/06/2025. The appellants have also obtained certified copy of Form 'D' of the suit property from the Deputy Superintendent of Land Record, Khamgaon on 18/06/2025. The Dy.S.L.R. also taken mutation in favour of Arbi Madarsa Panch Committee vide mutation Entry No. 126 on 07/01/2025 and remaining area of suit property has been mutated in the name of appellants vide Mutation Entry No. 130 on 12/02/2025. Therefore, immediately present application is filed by appellants. He submitted that, above mentioned disclosed new facts, are necessary to come on record in written statement. He submitted that, appellants were not having any knowledge about the execution of sale deed dated 30/11/1990 as well as Mutation Entry No. 126 and 130 before 20/02/2025. Due to it, appellants could not insert the proposed amendment in their written statement. He submitted that, if proposed amendment is allowed then no loss will be caused to the respondent. On the contrary if amendment is

not allowed then the appellants will suffer irreparable loss. He further submitted that, appeal is continuation of the suit. Therefore, the provision of Order 6 Rule 17 of the C.P.C. is applicable to appeal also. Hence, he urged to allow the application. He relied upon the following authorities.

3.1. Mallavva and Anr. Vrs. Kalsammanavara Kalamma and Ors., 2024 INSC 1021, in which the Hon'ble Supreme Court observed that, it is settled principle of the law that appeal is the continuation of the proceeding and even parties can amend their pleadings before the appellate Court also subject to proof of the fact. In view of the dictum of the Hon'ble High Court the first appellate Court can exercise the power under Order 6 Rule 17 of the CPC as it is a continuation of the proceeding.

3.2. Jayanandan and Another Vrs. Suresh Kumar and Another, 2024 INSC 956, in which the Hon'ble Supreme Court observed that, although several arguments were advanced at the bar, we have considered only one argument made by the learned senior counsel for the appellants being the

permission granted by the first appellate Court to seek amendment in written statement in A.S. No. 69 of 2010.

4. On the other hand, Mr. S.V. Agrawal, Ld. Advocate for the respondents has submitted that, present application is not maintainable, because, by way of proposed amendment the appellants are seeking to withdraw the earlier admissions made by original defendant. He submitted that, original defendant Mohd. Haroon in his written statement has clearly admitted his ownership and possession of the suit property in Para No. 2 of his written statement as well as in para No. 3 of his evidence vide Exh. 55. He submitted that, appellants are heirs of original defendant Mohd. Haroon and they have been brought on record in the trial Court also. He submitted that, the heirs of original defendant Mohd. Haroon are bound by the admission given by the original defendant and in fact and in law they cannot take contrary or adverse plea. Hence, application is liable to be rejected on this ground. He submitted that, present appellants being legal heirs of original defendant have not filed any

additional written statement and apparently adopted or deemed to have adopted the written statement filed by the original defendant. Hence, they are bound by the said admission of the original defendant. Therefore, now they are estopped from raising such averments which will have an effect of withdrawing the admission given by original defendant. Moreover, present appellants have not filed their written statement in the suit. Therefore, it is doubtful whether they can make such application for amendment in written statement which is filed by the original defendant who is now dead. Hence, he urged to reject the application. He relied upon the case **Prabodh Kumar Tiwary (Adopted) Son of Sahdeo Tiwary Vrs. Rakesh Kumar Tiwary (Adopted) son of Late Malti Devi and others, 2025:JHHC:16653**, in which the Hon'ble High Court of Jharkhand at Ranchi observed that, *it is well settled that an amendment cannot be allowed, if it causes prejudice to the party against whom an amendment is sought for. It is well settled that, the scope of the appellate Court is to test the correctness of the judgment under the appeal of any benefit or vested right on account of declaration of the rights, inter se between the parties to the lis, by the trial Court, cannot*

be allowed to be taken away by allowing an amendment to the pleading, at the appellate stage, when the party seeking an amendment could have brought in such a amendment, even at the time of commencement of the trial. An amendment admitting to wipe of the pleadings and admissions of the parties, already considered by the trial Court, for the purpose of arriving at the decision, in the suit, cannot be allowed to be substituted with a new case, at the appellate stage, which would certainly cause, serious prejudice to the party, against who the amendment is sought for. The effect of an admission in earlier pleading shall not be permitted to be taken away, by any proposed amendment at the appellate stage.

5. I have considered the submissions of the Ld. Advocates for both parties. Perused the application, say and record and proceeding of the case. I have gone through the authorities cited supra by the both parties.

6. The record shows that, respondent/original plaintiff has filed Regular Civil Suit No. 42/2012 before the Civil Judge Junior Division Khamgaon for specific performance of contract, possession with ancillary relief in

respect of Nazul Sheet regarding the suit property Nazul Sheet No. 31-C, Plot No. 1/21-D-50(1)/1-B-50, admeasuring area as per Namuna 'D' 291.44 Sq. Meter (3135.90 Sq. feet) and as per sale deed admeasuring total area 286.08 Sq. Meter (3078.25 Sq.feet) out of land Survey No. 11, wherein two rooms have constructed, basement of two rooms with other things situated at Khamgaon, on the basis of agreement to sale executed by original defendant in favour of plaintiff. According to plaintiff suit house was owned and possessed by the defendant. The plaintiff was in need of house and the defendant was also intending to sell out the house. Therefore, he gave proposal to sell his house and plaintiff accepted the same. Accordingly, original defendant executed the agreement to sale and agreed to execute registered sale deed of suit house for consideration of Rs. 3,30,000/-. The plaintiff has paid earnest amount of Rs. 1,00,000/- to the original defendant. The defendant agreed to execute sale deed on 30/05/2008. But, defendant was unable to hand over the vacant possession of the suit house to the plaintiff. Hence, defendant requested to the plaintiff seeking time for the same purpose till 30/08/2008. Hence, defendant executed another agreement to sell on

30/05/2008 in favour of plaintiff by extending time thereof. Said document was notarized. It was agreed that defendant will execute registered sale deed till 30/08/2008 by accepting balance consideration Rs. 2,30,000/-. Plaintiff requested defendants to perform his part of contract and he drawn pay order of Rs. 2,30,000/-. He asked defendant to remain present for execution of registered sale deed on 29/08/2008 or 01/09/2008. But defendant did not remain present. However, defendant sent notice to the plaintiff to avoid the registration of sale deed. Therefore, plaintiff filed suit for specific performance of contract.

7. Original defendant has resisted the suit by filing written statement vide Exh. 13. He has admitted about the description of the suit property. He has given his evidence before the trial Court as per pleading. After recording the evidence of defendant, he died and present appellants were brought on record being his legal representative.

8. Record shows that, even though present appellants were came on record as a defendants being legal heirs of original defendants they have not filed their written statement or additional written statement before the trial

Court. Original defendant certainly would have knowledge about the description of the suit property and the alleged execution of sale deed dated 30/11/1990 executed by him in favour of Arbi Madarsa Panch Committee, Khamgaon through Shaikh Ayyub Shaikh Rustum. Therefore, he would have sought amendment in the written statement during his lifetime pending the suit. It shows suppression of facts by original defendant. Now by way of proposed amendment the legal representative of original defendant are seeking to withdraw admission regarding the description of the suit property when the suit for specific performance of contract has been decreed by the trial Court. Considering above aspect though the appeal is continuation of suit, but at appellate stage the amendment in written statement cannot be allowed.

9. I have respect to the observations of the Hon'ble Supreme Court in the cases cited supra by the appellants, but, those are not helpful to them because facts are different. On the contrary as per observations of the Hon'ble Jharkhand High Court in which referring the various judgment of the Hon'ble Supreme Court, it is

specifically observed that, the effect of an admission in earlier pleading shall not be permitted to be taken away by any proposed amendment at the appellate stage. Moreover, appellants being legal representative of original defendant No. 1 cannot seek amendment in the written statement filed by the original defendant No. 1 who died during pendency of the suit. Hence, in such circumstances, if the proposed amendment is allowed, then certainly, it would be prejudiced to the respondent/original plaintiff. Moreover, the appellants and the Arbi Madarsa Panch Committee, Khamgaon through Shaikh Ayyub Shaikh Rustum who alleged to have purchased the said property from original defendant can avail appropriate remedy which is available to them. There is no need to make amendment in written statement at appellate stage. Moreover, this Court vide granting stay order to the execution of impugned judgment and decree has imposed condition that stay order shall be in force till decision of main appeal or till one year whichever is sooner from the date of order. Both parties were directed to co operate for disposal of main appeal within stipulated time. It shows that at verge of elapsing the one year period only to delay the hearing of main

MHBU04-000381-2024

... 12 ...

R.C.A. No. 20/2024
Zubaida Nasrin + 5
X Abdul Sattar
ORDER ON EXH. 11

appeal present application has been filed by the appellants.
Therefore, application being devoid of merit liable to be
rejected. Hence I pass following order :-

ORDER

1. The application Exh. 11 is hereby rejected.
2. Cost in cause.

Khamgaon.
Date – 16/09/2025.

(G. B. Jadhav)
District Judge – 1
Khamgaon

- - - - -

MHBU04-000381-2024

... 13 ...

R.C.A. No. 20/2024
Zubaida Nasrin + 5
X Abdul Sattar
ORDER ON EXH. 11

CERTIFICATE

I certify that this order P.D.F. uploaded is a true and correct copy of original signed order.

Name of the Court : District Judge – 1,
Khamgaon.

Name of the Stenographer : Miss H.D Chaudhari,
Stenographer Grade I.

Date of Order : 16/09/2025.

Date of Uploading : 17/09/2025.