

CNR NO. MHGA090003862020



IN THE COURT OF JOINT CIVIL JUDGE (JUNIOR DIVISION), CHAMORSHI
(Presided Over by Diksha D. Vighne)

Regular Civil Suit No. 09/2020

Bharatibai Lahuji Fulkalwar ----- **Plaintiff**

-Versus-

Smt. Premilabai Murlidhar Barlawar + 2 ----- **Defendants**

Appearance:-

Advocate for Plaintiff :- Shri. K. T. Munghate

Advocate for Defendants :- Shri. K. S. Akhade

Order Below Exh.24

(Passed on 23/12/2022)

This is an application under Order VI Rule 17 of Code of Civil Procedure for amendment in pleading (plaint).

2. Plaintiff has stated in the application that she has filed this suit for declaration of ownership and for declaration of order dated 24-01-2019 in M.J.C. No. 20/2018 as unlawful and for permanent injunction. After plaintiff has filed this suit then defendants have also filed suit for injunction against plaintiff and ors. Vide R.C.S. No. 11/2020. In that suit defendant had filed an application for temporary injunction, which was rejected. Therefore, defendant had withdrawn the the said R.C.S. No. 11/2020. Therefore, plaintiff has filed this application to bring that fact in this case.

3. According to him, if permission is granted then it will not

cause any prejudice to the defendants. But if application is rejected then it will cause irreparable loss to the plaintiff. Hence, in the interest of justice he has prayed for grant of permission to amend the plaint.

4. It is submitted that learned advocate for plaintiff that the proposed fact are subsequent event. The R.C.S. no 11/2020 was withdraw by defendants on 16-09-2022. Since, the suit is withdraw by defendants it must be come on record of this case. Because that suit was in respect of the same suit property survey no. 391 ad-measuring 1.06 H.R. situated at mouza Kurud. The suit was withdraw on 16-09-2022 i.e. during the proceeding of this case. Hence, for reading this fact in the suit plaintiff wants to add this fact by way of amendment in his pleading. Hence, he has prayed for grant of permission to this amendment.

5. On the other hand, learned advocate for defendants and filed his say on the back-leaf of this application. He has stated and submitted that plaintiff has filed this suit just for causing delay. The said fact stated in the application was already in the knowledge of plaintiff. He has to plead this fact in his plaint. But just for causing delay he did not do so. He has further submitted that if he wants to bring this fact before court then he can filed certified copy of that suit. But plaintiff does not do so. Therefore, he has prayed for rejection of application.

6. Perused application and say thereon. Heard learned advocate Shri. K.T. Munghate for plaintiff and learned advocate Shri. K.S. Akhade for defendants.

7. On perusal of application and record of the suit, it is seen that the plaintiff has filed this suit R.C.S. no. 9/2020 on 30-06-2020. The

R.C.S. number of the defendant's suit was 11/2020. It has clearly show that the suit of defendants was registered latter on after the registration of plaintiff's suit. By way of amendment plaintiff wants to bring on record the fact about withdrawal of R.C.S. No. 11/2020 on 16-09-2022. It is seen that the said fact of withdrawal was done on 16-09-2022. Therefore, bringing this fact in original plaint is highly impossible because at the time of filing this suit the said fact was not in existence. Therefore, the submission of the learned advocate of the defendants is not acceptable. Moreover, it is rightly submitted by learned advocate for plaintiff that for reading any fact in evidence it should be pleaded. Therefore, he wants to add this fact in his plaint. However, the said fact of withdrawal of suit is not denied by the defendants. I have seen that the R.C.S. No. 11/2020 was in respect of survey no. 391 ad-measuring 1.06 H.R. situated at mouza Kurud is also a suit property in the present suit. Hence, I find that bringing that fact of withdrawal of R.C.S. No. 11/2020 is necessary for proper adjudication of dispute between parties. Hence, in the result I pass following order.

ORDER

1. Application is allowed with cost of Rs. 200/- payable in court.
2. Plaintiff is directed to carry out amendment and filed amended copy of plaint within 15 days from the date of this order.

Date: 23.12.2022

(Diksha D. Vighne)
Jt. Civil Judge (Jr. Dn.),
Chamorshi.

CERTIFICATE

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

Name of Stenographer : Mr. M.R.Mohurle, Stenographer (Grade-3)

Name of Court : Jt. Civil Judge (Jr.Dn.) & JMFC, Chamorshi.

Date of Judgment : 23/12/2022.

Judgment checked and
signed by Presiding Officer on : 23/12/2022.

Judgment uploaded on : 23/12/2022.