MHGO070001982020

RCS. No. 08/2020
Sulkabai & oth. Vs. Manikrao

Order below Exh.79
(Passed on : 01/08/2025)

1. This is an application filed by the defendant for amendment under Order 6, Rule 17 of the Civil Procedure Code.

2. The defendant contended that the defendant has filed his written statement on 29/10/2020 at Exh. 26. In his special pleading in the written statement, the defendant submitted that he is in continuous possession of the disputed land since, 1995. Hence, the possession of the defendant is continuous and said pleading itself shows that the defendant has perfect title by way of adverse possession. Hence, the said pleading is not elaborated due to oversight in the written statement at the time of its filing. Further, the proposed amendment is relevant and necessary and the same will goes to the root of present case. It will not affect right of other side and same would not change the nature of defence. Lastly, defendant prayed to allow present application.

3. On the contrary, the plaintiffs have filed their reply at Exh. 81, wherein they strongly opposed present application. They

contended that defendant has not mentioned any justified reason for filing such application at this belated stage. The principle of adverse possession will not be applicable in present suit as suit property belongs to triable person and cannot be transferred to any non-triable person as per provision of section 36 and 36-A of the Maharashtra Land Revenue Code. Application is filed only with intention to prolong the matter. Defendant put new story in his written statement by way of proposed amendment which shall change nature of his defence. Hence, lastly plaintiffs prayed to reject present application with costs, as it is not tenable in the eyes of law.

4. I have perused present application, reply and record of the case. I have also given considerable thought to the argument advanced by both parties. At the outset, the defendant prayed for allowing proposed amendment in his written statement. Hence, it is necessary to look into relevant provision under the Code of Civil Procedure which is reproduced below for the sake of discussion:- Order 6, Rule 17 of the Code of Civil Procedure speaks that "The Court may at any stage of the proceeding allow either party to alter or amend his pleadings in such a manner and on such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties: Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement

of trial." It is to be noted that definition of 'due diligence' is not given in the Code of Civil Procedure. However, in general sense it can be defined as 'reasonable steps taken by a person to avoid committing a tort or offence'. Thus, in the present matter it is the obligation of defendant to show that he failed to file present application of proposed amendment at any earlier stage, inspite of taking due diligence, as in present matter trial has already commenced.

5. Learned counsel for the defendant relied on citation i.e. **Life Insurance Corporation of India Vs. Sanjiv Builders Pvt. Ltd. & another, 2022 AIR SC 4256**, wherein Hon'ble Supreme Court in para 70 clarified that "All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side". On the other hand, Learned counsel for the plaintiffs also cited case law namely **Modi Spinning and Weaving Mills Co. ltd. Vs. Ladharam and Co., 1977 AIR 680**, wherein Hon'ble Supreme Court held that "The defendant cannot be allowed to change completely the case and substitute an entirely different and new case."

6. I have gone through both above mentioned case laws. In the instant case perusal of record reveals that suit is filed for permanent injunction and declaration on 29/06/2020. Thereafter, defendant appeared and filed his written statement at Exh. 26 on 8/12/2020. Further, issues were framed on 6/8/2021 at Exh. 29. Thereafter, plaintiffs lead their evidence by filing affidavit of

plaintiff no. 1 below Exh. 41. Her examination in chief was recorded on 23/09/2024 wherein documents of plaintiff were exhibited. Thereafter, by passing order below Exh. 41, cross-examination of plaintiff by defendant was closed on 26/03/2025. Now, the matter is fixed for further evidence of plaintiff and in the meanwhile present application of proposed amendment in written statement of defendant is filed on 15/07/2025. Perusal of said application shows that defendant contended that due to oversight said pleading of proposed amendment has not been incorporated in his written statement at the time of its filing. Looking to the facts and circumstances of the case, it is necessary for the defendant to show that inspite of due diligence, he has not filed present application before commencement of the trial. However, in present application I found that defendant has not whispered single word or reason to state that inspite of due diligence he was unable to file present application before commencement of trial. On the contrary, he filed present application at this stage where evidence of plaintiff no. 1 is already completed, contending that due to oversight he failed to incorporate proposed amendment pleading in his written statement at the time of its filing. If this reason is taken into the consideration, then it can be pointed out that the defendant had ample opportunity to file present application before recording evidence of plaintiff and also before framing issues, as he has knowledge that said pleading was not incorporated in his written statement since inception.

7. Further, perusal of proposed amended pleading shows

that defendant intended to take plea of adverse possession and ownership by way of adverse possession in his written statement. Written statement of defendant reveals that he has already contended that he was in possession of said property by virtue of gift deed since the year, 1995 and he is cultivating said land continuously. It is to be noted that issue to that effect is already framed wherein burden is casted upon defendant to prove that he is possession of suit land and execution of gift deed in the year 1995. Thus, if proposed plea of defendant is allowed then it will definitely change nature of defence as in specific pleading of defendant, he has not whispered anything about his ownership over the suit land. Therefore, after considering aforementioned observations, I found that defendant failed to show any justified reason to state that inspite of taking due diligence, he failed to file present application before commencement of trial which is mandatory as per Order 6, Rule 17 of the Code of Civil Procedure. Further, if proposed amendment is allowed, then it will cause prejudice to the plaintiff as she has already recorded her evidence for the issues framed below Exh. 29. As far as case law relied by the defendant, I found that with all respects it will not be helpful for him as facts and circumstances of present case are different than the above cited case. Therefore, the conclusion of my aforesaid discussion is that, I am not inclined to allow present application of proposed amendment of defendant as it is not tenable under the provisions of law. Resultantly, I pass the following order:-

ORDER

Application (Exh. 79) for proposed amendment in written statement of defendant is hereby rejected.

VINAY SAHADEO MENDHE

Digitally signed by VINAY SAHADEO MENDHE
Date: 2025.08.01 17:16:48 +0530

Date :01/08/2025

(V. S. Mendhe)
Civil Judge, Junior Division,
Deori

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	:	Sanjiwan Waman Malame
Court	:	Shri V. S. Mendhe Civil Judge J.D. & J.M.F.C., Deori
Date	:	01.08.2025
Order signed by the presiding officer on	:	01.08.2025
Order uploaded on	:	01.08.2025