

Sau. Shobha Zend Vs. Ramesh @ Rameshchandra Bidkar

Order Below Exhibit 60 in R.C.S No. 103/2012

[MHJN050012802012]

01. Plaintiff filed application under order VI Rule 17 of Code of Civil Procedure. Through this application plaintiff prayed to make amendment by adding claim clause No.3 after claim clause No.2 as **“A Suit for declaration that, the registered sale deed bearing No. 157/1996 dated 24.05.1996 in the office of Sub-Registrar, Partur executed by defendant no. 3 i.e Subhash Beedkar in favour of Defendant no.1 Rameshchandra Beedkar is illegal, null and void, without title and not binding upon plaintiffs”**, also add para no.4-A after the para no. 4 as **“That the defendant no. 3 i.e Subhash S/o Ramrao Beedkar executed a sham and Bogus sale deed without consideration bearing No. 1579/1996 dated 24/05/1996 in the office of Sub-Registrar, Partur, without having title in respect of suit property which is quite illegal, null and void, without title and not binding upon the plaintiffs”** and by adding prayer clause No. A-2 after prayer clause no. A-1 as **“it may kindly be declare that, the register sale deed bearing No. 1579/1996 dated 24/05/1996 in the office of**

Sub-Registrar, Partur executed by Defendant No.3 i.e Subhash Beedkar in favour of defendant No.1 Rameshchandra Beedkar is illegal, null and void, without title and not binding upon plaintiffs’’. The said amendment is necessary as to decide the matter in controversy between the parties. It is contended that, the proposed amendment is consistent with the plaint. the present amendment will not change the nature of the suit. If application is allowed, no prejudice would be caused to the defendants. The plaintiff argued that, he is ready to file court fee if necessary. Therefore, to decide the matter on merit application needs to be allowed.

02. The defendant filed say and contended that, said amendment change the nature of the suit. Hence, prayed for the rejection of application.

03. Heard both side.Perused the application. The said suit is for partition and separate possession and perpetual injunction.

04. I have given sincere consideration to the rival contentions of the parties and argument advanced by their learned advocates turns to proceed appreciate the merit of present application.

05. Before embarking towards the appreciating the application, it is pertinent here to state the basic principle regarding allowing or rejecting the amendment application viz;

i) Whether the amendment sought is imperative for proper and effective adjudication of the case?

ii) Whether application for amendment is bonafide or malafide ?

iii) The amendments should not cause such prejudice to the other side which cannot be compensated adequately in terms of money ;

iv) Refusing amendment would in act leads to injustice or lead to multiple litigation;

v) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case ? and,

vi) As a general rule, the Court should decline amendment if a fresh suit on the amended claims would be barred by limitation on the date of application.

06. Before embarking towards the merits of the present application, here it is necessary to make mention the settle position of law, regarding the amendments of the pleading. It is settled position of law that amendment can be allowed at any stage of the proceeding even when the case is posted for judgment. Furthermore

in spite of delay and latches amendment can be allowed if the fact of the case so proposes, as dominant purpose of allowing amendment is to minimize the litigation.

07. Keeping in mind above principles and arguments advanced by learned advocates, turn to proceed to appreciate the merits of the present application.

08. By proposed amendment the plaintiff intended to claim relief of declaration in addition to partition and separate possession and perpetual injunction and also intending to incorporate assertions to that effect in para no 4 and prayer clause. In the present application, the plaintiff specifically pleaded that, during pendency of suit, the defendants produced the copy of registered sale deed bearing no.1579/1996 dated 24/05/1996 executed by Defendant No.3 i.e Subhash Beedkar in favour of defendant No.1 Rameshchandra Beedkar thereafter she came to know about the execution of above registered sale deed. Therefore, plaintiff constrained to make proposed amendment. The proposed amendment appears to be in consonance with the averments in made in the plaint. By proposed amendment, the plaintiff is only intending to straighten the assertions made in the plaint. Therefore, considering the nature of the proposed amendment, it cannot be said

that, the plaintiff is trying to set-up new case or trying to change nature of the suit.

09. It is settled position of law that, all amendments of pleading are required to be allowed which are necessary for determination of real controversy in the suit provided that, proposed amendment does not alter or substitute a new cause of action on the basis of which original pleas was raised or defence taken. So also it is settled position of law that, mere delay in filing the application for amendment is not a ground for rejection of the same

10. Considering the assertions made in the proposed amendment it appears that, it is only in the nature of strengthening the assertions made in the plaint. Therefore, the proposed amendment is appears to be necessary for complete and final adjudication of the controversy between the parties. Further more, considering the purpose and object of the Order VI Rule 17 of C.P.C., the proposed amendment appears to be just and proper in order to adjudicate the controversy between the parties finally. Moreover, proposed amendment would help for avoiding multiplicity of the proceedings. No prejudice would appears to be cause to the defendants. Therefore, application deserves to be allowed. However, considering the time taken by the plaintiff for

moving the present application, cost is required to be imposed. In net result this court proceed to pass following order :

ORDER

1. Application at Exh.60 is hereby allowed subject to cost of Rs.300/- (Rs. Three Hundred Only)
2. The plaintiff is directed to make amendment as prayed on or Before Next Date.
3. The plaintiff is directed to pay the requisite court fee on proposed reliefs.

Date: 04/05/2022

(Shri M. S.Bharad)
C.J.J.D Court no: 2, Partur.