

Order below Exh.21 in Regular Civil Suit No.2/2017.

This is an application moved by the plaintiffs for amendment of plaint under Order 6 Rule 17 of the Code of Civil Procedure.

2) Heard learned advocate B.G. Kamble for the plaintiffs. Perused the application and say.

3) According to plaintiffs, the defendant No.2 to 4 obstructed the peaceful possession of the plaintiffs in the year 2017. Hence, plaintiffs wants to insert the pleading that plaintiffs got the knowledge about the execution of sale deed after the certification of M.E.No.802 dated 23/10/2016. The defendants applied to village officer for recording their names on 17/10/2016.

4) According to plaintiffs, inadvertently they failed to plead this fact in the pleading. Hence, the application.

5) The defendants strongly opposed the application contending that this application is moved when the defendants filed application for rejection of plaint. By way of this application plaintiffs wants to amend the cause of action to bring their relief of declaration of sale deed within limitation. Hence, the application is liable to be rejected.

6) The perusal of cause of action in para No.5 of plaint revealed that the plaintiffs have specifically contended that they got the knowledge about the execution of sale deed dated 15/11/1991 on the date of it's execution and when defendants obstructed to their possession over the suit property i.e. on 02/01/2017. For the better particulars I quote the said para in verbatim as under :

“यातील प्रतिवादी नं.१ यांनी प्रतिवादी नं.२ याचे पती तसेच प्रतिवादी नं. ३ व ४ यांचे वडील कै. निंगाप्पा रामचंद्र गावडे यांचे बरोबर संगनमत करुन दि. १५/११/१९९१ रोजी दावा मिळकतीचे बेकायदेशीर खरेदीपत्र केले तेव्हा. तसेच २ जानेवारी २०१७ रोजी यातील प्रतिवादी नं.२ ते ४ हे वादी यांचे दावा मिळकतीतील शांततामय कब्जे वहिवाटीला हरकत व अडथळा करु लागले तेव्हा दावेस कारण घडले व त्यानंतर रोजचे रोज घडत आहे”.

7) According to learned advocate for the plaintiffs, plaint can be amended at any stage. Hence, she relied on Chakreshwari Construction Pvt. Ltd.

Vs. Manohar Lal [2017(5) Mh.L.J.195]. In this case, Apex Court held that “amendment of pleading can be made at any stage”. But in the present case, the plaintiffs by way of proposed amendment are amending the cause of auction. In the above cited case, there is no issue that cause of action can be amended. Hence, the ratio in the above cited case is not helpful to the plaintiffs.

8) The plaintiffs have also relied on Gaganmal Ramchand Vs. The Hongkong & Shanghai Banking [AIR 1950 Bom. 345]. However, the facts of the said case and the present case are altogether different. Hence, this case law is not helpful to the plaintiffs.

9) The perusal of proposed amendment clearly revealed that by way of proposed amendment, plaintiffs wants to insert a different case in respect of declaration of sale deed. As the perusal of cause of action column clearly revealed that plaintiffs got the knowledge about the execution of sale deed on the same day itself. Hence, by proposed amendment plaintiffs are inserting new case that they got the knowledge on 23/10/2016 about the execution of sale deed. Therefore, in view of the ratio laid down by Hon'ble Apex Court in South Konkan Distilleries Company Vs. Prabhakar Gangaram Naik and another [AIR 2009 SC 1177] that “where the amendment does not constitute the addition of a new cause of action or raised a different case but amounts merely to a different or additional approach to the same facets, the amendment is to be allowed even after expiry of statutory period of limitation”.

10) In the present case, the amendment constitute a different case in respect of cause of action to the claim of declaration of sale deed dated 15/11/1991.

11) Therefore, in my considered view, the application is liable to be rejected. Hence, I proceed to pass the following order.

Order

1. The application is rejected.
2. Costs in main cause.

Sd/-

(M. D. Thombare)

Civil Judge, Jr. Dn., Chandgad.

Dated:- 10/01/2018.

CERTIFICATE

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

Name of the Stenographer	Shri. V. L. Tadkod, L. G. Stenographer.
Name of Court	Shri. M.D. Thombare, Civil Judge, Junior Division and Judicial Magistrate, First Class, Chandgad.
Date of Dictation	10/01/2018
Judgment/Order signed by the P. O. on	10/01/2018
Judgment/Order uploaded on	10/01/2018