



R.C.S.NO.51/2022
Krushna Koli and others Vs
Aannappa Koli and others
CNR NO.MHKO180001902022

ORDER BELOW EXH.18.

(Passed on 14th November 2022)

1. This application is filed by the defendants under O.6 Rule 17 of C.P.C. for amendment in their written statement. As per the contention of the defendants present suit is filed by the plaintiff for perpetual injunction. They have filed their written statement at Exh.11. The plaintiffs have falsely pleaded that, they are in possession of the suit property as a tenant. The issue as to whether the plaintiffs are in possession of the suit property as a tenant is required to be decide. Hence they have requested to grant them permission to add word “Pokal” in para No.9 of their written statement. They have also requested to add pleading that “ plaintiff were and are never in possession of the suit property as a tenant. They were not in possession of the suit property as a tenant along with the defendants”.

2. They have further contended that, if permission granted them to amend their written statement there will be no change of the nature of their defense. Hence they have requested to grant this application.

3. The plaintiffs have filed their say at Exh.19 and strongly opposed this application. As per their contention false application

is filed by the defendants. The defendants have filed their written statement on 11/04/2022. They have not mentioned the word “Pokal” in their written statement. They have filed this application after thought. The predecessor of the Bapu Bandu Pujari were the owner of suit property. The predecessor of the plaintiffs namely Nillappa Annappa Koli was in possession of the suit property as a tenant. He was in possession of the suit property as a tenant on behalf of his family. Kalappa, Dhulappa, Ganapati and Shyamrao were the brothers of Nillappa. Their name are recorded as a tenant in the revenue record of the suit property. Ganapati is died and Maruti is his son and his name is recorded in the 7/12 extract of the suit property. Accordingly mutation entry is taken and thereby name of Nilappa is entered in the revenue record of the suit property. There is no such concept in the law as the said entry is “pokal”. The name of Nilappa is entered in the land Gut No.1179 as a protected tenant. Hence requested to reject this application.

4. This application is filed under O.6 R.17 of C.P.C. which reads as under:-

Amendment of pleading- the court may at any stage of the proceeding allow either party to alter or amend his pleading 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 real question in controversy between the party.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the

conclusion that in spite of due diligence the party could not have raise the matter before the commencement of the trial.

5. Heard both side perused record and proceeding. Considering the above mention provision leave to amend of the pleading may be granted in the following cases-

a) Where the amendment is necessary for determining real question in controversy between the parties.

b) Where the nature of defense will not be changed if the proposed amendment is allowed.

c) Where the application for amendment is filed before the commencement of the trial and same is filed in good faith.

6. The defendants wants to add word "Pokal" in para No.9 of their written statement. They have also requested to add pleading that " plaintiff were never tenant of the suit property. They were not in possession of the suit property as a tenant alongwith the defendants". The plaintiff has objected this application on the ground that, the contents of the application are false. Defendants have not mentioned the word "Pokal" in their written statement. They have filed this application after thought. The predecessor of the Bapu Bandu Pujari were the owner of suit property. The predecessor of the plaintiffs namely Nillappa Annappa Koli was in possession of the suit property as a tenant. He was in possession of the suit property as a tenant on behalf of his family. Kalappa, Dhulappa, Ganapati and Shyamrao were the brothers of Nillappa. Their name are recorded as a tenant in the revenue record of the

suit property. Ganapati is died and Maruti is his son and his name is recorded in the 7/12 extract of the suit property. Accordingly mutation entry No.1507 is sanctioned and the name of Nilappa is entered as a tenant.

7. On perusal of record it shows that issues are not yet framed. Therefore it shows that this application is filed before the commencement of trial. The plaintiffs have pleaded that, Kalappa, Dhulappa, Ganapati and Shyamrao were the brothers of Nillappa. Their name are recorded as a tenant in the revenue record of the suit property. But the defendants have denied their possession. They have not admitted that the predecessor of the plaintiffs were in possession of the suit property as a tenant.

8. No doubt that the defendants have pleaded that the names of predecessor of the plaintiffs are entered in the revenue record of the suit property. But it does not mean that, they have admitted that the plaintiffs and their predecessor were and are in possession of the suit property as a tenant. Therefore it appears that, by way of proposed amendment the defendants are not going to withdraw the admission which is already given by them in their written statement. It also appears that the proposed amendment is necessary for determining real question in controversy between the parties and the application is filed in good faith. The nature of defense of defendants will not be changed if the proposed amendment is allowed. Hence considering all these things I think it would be just and proper to grant this application. Hence I

proceed to pass following order.

ORDER

1. Application is allowed.
2. The defendants shall carry out amendment in their written statement below Exh.11 within 14 days from the date of this order.
3. The defendants shall filed necessary copies of amended written statement after carried out amendment below Exh.11.

Date: 14/11/2022

(S. S. Ingale)
Civil Judge Jr.Division,
Kurundwad