



**Order below Exh. 28 in R.C.S. No. 05/2020**

**01.** This is an application made by the defendants under order VI Rule 17 of the Code of Civil Procedure to amend their pleadings in written statement. It is contended that the suit is instituted for seeking relief of perpetual injunction against the defendants. The defendants have filed their written statement. However, now the defendants want to amend their pleadings in written statement by inserting recital that ancestor of the plaintiffs permitted father of the defendants to erect shed/house in 5 R. area at western side in suit block No.10. The said area was in possession of ancestor of the defendants. Thereafter said area purchased by the defendants from plaintiffs' ancestor Akaram Jadhav. The said fact is know to the plaintiffs. Thus, there is bar of estoppel by conduct to the plaintiffs.

**02.** As such, the proposed amendment is sought by the defendants without causing any delay as trial of suit is not commenced yet. The plaintiffs would not put to any loss if proposed amendment is allowed. Rather, it will be helpful for the Court in resolving dispute between the parties on merits. Ultimately, these defendants prayed to allow the application.

**03.** The plaintiffs resisted contentions in the application by filing their say at Exh. 29. They specifically averred that the Court has issued temporary injunction against the defendants on

25-02-2020 and restrained them from making construction in the suit property. The defendants filed their written statement and contended about the suit property. Considering said contentions, the Court has passed order of temporary injunction. The defendants approached the Hon'ble Appellate Court against the order of temporary injunction and said appeal bearing Misc.Appeal No. 55/2020 is pending. The defendants made present application against the provisions of law. The recital of proposed amendment is already contended by them in their written statement. Therefore, they cannot seek amendment of same nature. The Court while passing order on application of temporary injunction already discussed said aspect. However, by way of proposed amendment, the defendants want to bring it on record. The defendants are having opportunity to lead evidence as per their pleadings in written statement. They are trying to fill lacuna in written statement after passing order of temporary injunction. The defendants have not produced any document in support of proposed amendment. Likewise, already they had an opportunity to plead the said aspect in their written statement. As such, they have not clarified that what circumstances were prevented them to plead the said aspect at the time of delivering their defence. For all the above reasons, the plaintiffs prayed to reject the application.

**04.** Heard learned advocates for both parties. From the pleadings, arguments and documents on record, following points arise for consideration. I have given finding on each point for the reasons to follow:

<u>Sr.No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1	Whether proposed amendment is necessary for the purpose of determining the real question in controversy between the parties ?	Yes.
2	What order ?	Application is allowed.

### REASONS

#### As to point No. 1 :

**06.** In context to proposed amendment as sought by the defendants, on perusal of their written statement (Exh.18) it appears that they have pleaded about purchase of 5R area out of suit block No.10. Now by way of proposed amendment, the defendants want to insert recital that predecessor of plaintiffs permitted father of the defendants for erecting shed/house at western side of suit block No.10 in 5 R area. Thereafter, said area was purchased by predecessor of plaintiffs in the year 1990. Thus, the defendants are not creating new case but they want to add certain additional portion relating to their previous pleading of sale deed dated 14-02-1990. The proposed amendment cannot said to be harmful or affecting any right of the plaintiffs.

**07.** As per settled principle of law, while considering amendment application, merits of the case need not be looked into. In present suit, on considering pleadings in written statement of defendants the proposed amendment is not inconsistent with their previous plea of defence. Vide present application, these defendants sought insertion of certain recital in written statement

relating to possession to the extent of 5 R out of the suit property by their ancestor.

**08.** Hence, looking to the contentions in application for amendment in the light of averment in the written statement it is seen that the amendment sought is bonafide and will not change nature of the defence. If the proposed amendment is allowed no prejudice will be caused to the plaintiffs. Considering nature of the suit, it deems necessary to allow the defendants to amend their pleadings. This Court is satisfied that proposed amendment is necessary for the purpose of determining the real questions in controversy between the parties and to avoid multiplicity of the proceedings. Hence, point No.1 is answered in the affirmative and to answer point No. 2, I proceed to pass following order.

**ORDER**

1. Application is allowed subject to costs of Rs. 200/- payable to the plaintiffs.
2. The defendants to carry out necessary amendment in written statement as enumerated in the application within 14 days from the order.
3. The defendants to supply sufficient copies of the written statement after carrying out amendment as above.

Date : 14/12/2021.

(V.V.Khulape)  
Civil Judge Jr.Dn.,  
Kale-Kheriwade.