

Reg. Civil Suit No. 498 of 2013
Babu Vs. Govind and another

ORDER BELOW EXH. 90
(Passed on 10.04.2024)

1. This is an application filed by defendant No.1 under the provisions of Order XIV Rule 5(2) of the Code of Civil Procedure, 1908 and thereby prayed for striking out of issues No.1 and 5 framed below Exh.79.

2. In brief, it is the case of defendant No.1 that in the instant matter the plaintiff has illegally and unauthorizedly carried out an amendment in the plaint and also filed amended plaint without prior permission of this Court. According to the defendant, thereafter this Court framed issues below Exh.79 relying upon the said amended plaint. Thereafter the instant defendant had filed an application below Exh.88 and thereby sought for striking out the illegal amendment carried out by the plaintiff. The said application came to be allowed and the plaintiff was directed to delete the extra and illegal amendment. Accordingly, the said amendment came to be deleted vide order passed below Exh.1. However the issues framed at Exh.79 on the strength of said illegal amendment needs to be struck out. Hence, the instant application.

3. The learned advocate for the plaintiff vide his say overleaf the application has strongly objected the instant application and thereby prayed for rejection of the same.

4. I have heard learned advocate for the defendant Shri. B. V. Patil and learned advocate Shri. A. K. Bhosale for the plaintiffs for some time. Perused the record. Perusal of the amendment application at Exh.69 and order passed thereon aptly reveals that the said application was allowed only to the extent of addition of defendant No.3-e viz. Chhaya Govindrao Wakle. However, it is clear that instead of carrying out amendment only to the extent of addition of defendant No.3-e, the learned advocate for the plaintiff has inadvertently carried out additional amendment in respect of one separate relief of recovery of encroached portion as well. In respect thereof this Court vide its order below Exh.1 dated 18.03.2024 has struck off the said additional

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amendment carried out by the learned advocate for the plaintiff.

5. Shri. Patil, learned advocate for defendant No.1 has argued that acting upon the said additional amendment rather than the illegal amendment carried out by the learned advocate for the plaintiff, the Court has considered the said amendment and thereby framed issue No.1 and 5 in respect of the same. I have perused the said issues framed at Exh.79. Issue No.1 therein is that “Whether plaintiff proves that defendant No.1 has made encroachment in the suit property to the extent of 14 R land?” and fifth issue is that “Whether the plaintiff entitled for a decree of possession as claimed?”. I have gone through the record. Perusal of the same reveals that the suit is filed for simpliciter injunction and the above two issues are in respect of encroachment by defendants and possession of encroached portion. However, considering the entire pleadings of the plaintiff vis-a-vis orders passed below Exh.1, 40, 69 and 88, it is clear that the amendment was allowed only to the extent of impleadment of defendant No.3-e viz. Chhaya Govindrao Wakle in the array of the defendants and amendment in respect of addition of separate substantive relief of getting possession of encroached portion is not considered vide order passed below Exh.40. Thus, it is clear that the learned advocate for the plaintiff has inadvertently carried out additional amendment, which is directed to be struck off the record vide order below Exh.1. Further it is observed that the issues No.1 and 5 came to be framed on the strength of said additional and unauthorized amendment. Thus, I hold that both these issues appears to be wrongly framed or introduced, and therefore both the issues needs to be struck off. Hence, issue No.1 and 5 are hereby strike out and the rest of the issues are renumbered and retyped below Exh.79. Order accordingly.

(Bhalchandra R. Zende)
4th Jt. Civil Judge (J.D.),
Udgir.

Date : 10.04.2024