

MHND260000192021



ORDER BELOW EXH. 88

This is an application under Order VI Rule XVII of Code of Civil Procedure praying for amendment in plaint.

2. According to the plaintiff, she has filed suit for recovery of possession of land gut no. 24 adm. 0 H 17 R situated Ardhapur against defendants. Defendants are in illegal possession of land since 12.01.2019 therefore the plaintiff wants to claim mesne profit against defendants. Therefore plaintiff wants to amendment in the suit in para no. 8 of the plaint which is more particularly described in the application. Hence, prayed to allow the application.

3. Defendants filed their say below Exh. 94 and opposed the application on the ground that, application is not tenable in the eye of law therefore present application is not merit and any substantial ground. Present application is filed for only harass defendants. Present amendment is not permitted if such amendment is to change the structure of plaint. The plaintiff has sought the relief of mesne profit therefore the nature of suit will be changed. Finally prayed to reject the application with compensatory costs of Rs. 50,000/-.

4. Following points arose for my determination to which my findings with reasons thereon are as under:-

Sr. No.	Points for determination	Reasons
1.	Whether proposed amendment is necessary to determining real question in controversy between the parties?	In the affirmative.
2.	What Order?	Application is allowed.

REASONS

Reason as to point No. 1 and 2 :

5. Read application. Heard learned Advocate for the plaintiff and defendants and perused the record. Order VI Rule XVII of Code of Civil Procedure deals with amendment of pleading i.e. the Court may at any stage of the proceeding allow either party to alter or amendment in pleading. In such manner, and on such terms as may be just and all such amendment shall be made as may be necessary for the purpose of determining real question in controversy between the parties. Provided that, no such amendment shall be allowed after trial has commenced unless the court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of the trial.

6. Proviso of Order VI Rule XVII of Code of Civil Procedure speaks about no application for amendment has to be allowed if the party files application or trial has commenced, unless the court comes to the conclusion that, the party could not have raised the matter before the commencement of trial.

7. Considering ratio laid down by Hon'ble Supreme Court in the case of ***Usha Devi v. Rijwan Ahamd***, reported in (2008) 3 SCC 717 relevant paragraphs of the judgment cited supra and ratio are quoted as 7. Amendment of pleadings used to be one of the easiest things in the course of judicial proceedings before the amendments came to be made in CPC in the year 1999. It was felt that the provision for amendment of pleadings (Order 6 Rule 17) was greatly abused and it was one of the significant sources of delay in the judicial process. Accordingly, as per the recommendation of the Law Commission, the provision for amendment of pleadings was altogether deleted by Act 46 of 1999. The deletion of the provision led to widespread protests by lawyers and different legal bodies and as a result the provision was once again introduced, albeit with a rider, by Act 22 of 2002, with effect from 1-7-2002. In its amended form, Rule 17, Order 7.6 carries a proviso that bars any amendment after the commencement of trial unless the court came to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of trial.

8. Hon'ble Supreme Court further stated : (Jai Jai Ram Manohar Lal case [Jai Jai Ram Manohar Lal v. National Building Material Supply, (1969) 1 SCC 869] , SCC p. 873, para 7) '7. ... The power to grant amendment of the pleadings is intended to serve the ends of justice and is not governed by any such narrow or technical limitations.

9. Admittedly, suit is for recovery of land from the possession of defendants. Section 2 (12) of Code of Civil Procedure defines mesne profit as profit which the person in wrongful possession the property actually received or might or ordinary diligence have receive their from together with interest on such profit. Practically if any court deals with suit for recovery of land court has to decide mesne profit gained by wrongful possessor. On perusal of plaint no where plaintiff prayed for relief of mesne profit. Since, main relief in the suit is for recovery of land. Relief of mesne profit deserves to be appended along with main relief.

10. Inconveniency causing to plaintiffs can be curd out by imposing certain cost under section 35 of Code of Civil Procedure. Hence, my finding to point no. 1 in the affirmative and in answer to point no. 2 I pass following order :

:-ORDER:-

1. The Application is allowed subject to costs of Rs. 5000/- to be paid to the defendant.
2. The plaintiff is at liberty to amend the plaint more particularly mentioned in para no. 1 of this application as prayed.
3. The plaintiff is directed to amend the plaint forthwith.
4. Application is disposed off in above terms.

Place :- Ardhapur.

Date :- 04.12.2024.

(Q. R. Syed)

Jt. Civil Judge Jr. Div. Ardhapur.

CERTIFICATE

I affirm that the contents of this P.D.F. file order are same, word to word, as per the original order.

Name of the Jr. Clerk: A.V.Shahane

Court of : Jt. Civil Judge Junior Division, & JMFC Court No. 02, Ardhapur Dist. Nanded.

Date of pronouncement of Judgment/Order : 04.12.2024

Judgment/Order signed by the Presiding Officer :05.12.2024

Judgment/Order uploaded on : 05.12.2024.