

RCS No.8/2021  
Sushma -VS- Jaydeo

**ORDER BELOW EXH.55**  
(Passed on 07/11/2024)

The plaintiffs have filed the instant application under Order 6 Rule 17 of the Civil Procedure Code for seeking amendment in plaint.

2] The plaintiffs submitted that the plaintiffs have filed second appeal before the Hon'ble High Court which is recently decided. The Tahsil Office has illegally mutated the name of defendant No.1 in the suit fields. Thus, in view of above facts and subsequent developments the plaintiffs wants to amend the plaint by adding para No.20-A to 20-K after para No.20 in the plaint and wants to correct the description regarding boundaries of suit property as mentioned in the para No.3 of the present application. The proposed amendment is necessary and if the proposed amendment allowed the nature of suit will not be changed and no prejudice would be caused. Finally, prayed for application be allowed.

3] Defendant No.1 filed say below Exh.64 and resisted the application on the ground that the application is false and fabricated. Due to amendment the nature will be change and it will prejudice to defendant No.1. Hence, defendant No.1 prayed

for rejection of the application.

4] Perused the application and record. Heard the learned advocate Shri Agrawal for the plaintiffs and Shri Bagde for the defendant No.1.

5] Advocate of the plaintiffs relied upon following judgments and filed written arguments at Exh.65.

- [1] AIR 2008 S.C. 2303
- [2] 2012(1) Mah.L.J. 971.
- [3] 2006(6) Mah.L.J. 765.
- [4] 2013(5) Mah.L.J. 822.
- [5] 2008 (2) All.M.R. 201.

6] The present suit is filed for declaration, perpetual mandatory injunction. It is prayed by this suit that the decree passed in RCA No.72/2011 dated 24/04/2017 is not binding on plaintiff No.1. It is further prayed that sale deed No.4324/2020 of suit filed No.250/2 is also not binding on plaintiff No.1 and the injunction against the defendants.

7] It is the case of the plaintiff that some developments had made during the pendency of suit and those are required to be brought on record for just decision of the case. The factual

aspects which are necessary for deciding the suit are needs to be the part of the plaint, if the amendment is not allowed then there will be prejudice to the plaintiffs as this facts are necessary for proving the case of the plaintiffs.

8] By this application plaintiffs amend the plaint as regards the observation by the Hon'ble High Court about the previous litigation between the parties. On the contrary, the amendment further necessary to prove the facts as regards the order passed in the revenue cases.

9] The present matter is pending for summons to defendants and for taking steps. Therefore, it is clear from record that hearing of the suit is not yet commenced. The amendment sought by the plaintiffs definitely does not change the nature of the suit. By this amendment plaintiffs are not claiming any additional claim. By this amendment plaintiffs also not withdrawing any admission from the plaint. Therefore, it seems to be for the introduction of some new facts with additional factual aspects. This will definitely help to the court to adjudicate the suit completely.

10] As per the judgments relied by the advocate for the plaintiffs in *AIR 2008 Supreme Court 2303* amendment of

pleading “ Amendment of pleadings – Pre trial amendments are to be allowed liberally than those sought to be made after commencement of trial ”. In **2012(1) Mah.L.J. 971** it is observed that “ Amendment of pleading – An amendment application can be allowed if it results in bringing the facts before the court which would facilitate the dispute between parties being completely adjudicated.”. In **2006 (6) Mah.L.J. 765** the Hon’ble High Court held that “ The trial court can take cognizance of development which occur during pendency of the suit. Amendment is permitted when the subsequent developments require adjudication of certain issues in the same civil suit.” In **2013 (5) Mah.L.J. 822**, the Hon’ble High Court observed that “Application for amendment filed prior to the commencement of trial. Court has to take liberal view in allowing application for amendment which is necessary to decide the matter in controversy.”. In **2008 (2) All. M.R. 201** the Hon’ble Bomaby High Court held that “Amendment of pleadings. Application for amendment of pleadings can be made till the commencement of the trial without any explanation.

11] Considering the above cited judgments and the judgment of Hon’ble Supreme Court of India in Civil Appeal No.5909/2022, Insurance Corporation of India Vs. Sanjeev Builders Private Limited dated 01/09/2022. The amendment is required to be allowed. The Judgment of Hon’ble Supreme Court

in paragraph No.70 (ii) and (iii) and (iv) held as follows :

70 **(ii)** The prayer for amendment is to be allowed

(i) If the amendment is required for effective and proper

adjudication of the controversy between the parties and

(ii) and to avoid multiplicity of proceedings, provided

(a) The amendment does not result in injustice to the other side,

(b) By the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers right on the other side and

(c) The amendment raise a time barred claim, resulting in divesting of other side of a valuable accrued right (in certain situations).

**(iv)** A prayer for amendment is generally required to be allowed unless

(i) By the amendment a time barred claim is sought to be introduced in which case the fact that, the claimed would be time barred becomes a relevant factor for consideration.

(ii) The amendment changes the nature of the suit,

(iii) The prayer for amendment is marmalade or  
(iv). by the amendment the other side loses a  
valid defence,

(v) In dealing with a prayer for amendment of  
pleadings the court should avoid a hyper technical  
approach, and is ordinarily required to be liberal  
especially where the opposite party can be  
compensated by costs.

Vi.....

(vii) Where the amendment merely sought to  
introduce as an additional or new approach without  
introducing a time barred cause of action, the  
amendment is liable to be allowed even after expiry of  
limitation.

Viii...

(ix) Delay in applying for amendment along is not the  
ground to disallow the prayer. Where the aspect of  
delay is arguable, the prayer for amendment could be  
allowed and the issue of limitation framed separately  
for decision.

12] Considering these judgments as trial is not  
commenced yet therefore the defendant get the chance to resist  
the amendment contents in the plaint by filing additional written

statement. There will be no prejudice to the defendant if it is allowed. The amendment sought is actually introductory in nature. In such circumstances for the just decision of the case as well as for the complete adjudication of the dispute the application is required to be allowed. Hence, I pass the following order.

**ORDER**

- 1 Application (Exh.55) is allowed.
- 2 The plaintiffs is allowed to carry out amendment till next date.
- 3 The plaintiffs shall file copy of amended plaint accordingly.
4. No order to costs.

Kamptee  
Date : 07/11/2024.

**(Mohan R. Kamat)**  
Civil Judge, Junior Division,  
Kamptee.