

Spl. Civil Suit No. 160/2017
Deorao Vs. Nanda + 2

ORDER BELOW EXH.61

Read the application, say vide Exh. 62 and record. Heard Ld. Advocates for the parties.

2] Defendants have filed this application under Order VI Rule 17 of Civil Procedure Code seeking permission to amend the written statement Exh. 24. Defendants want to add some contents to clarify their previous pleading in paragraph Nos. 2 and 7 of the written statement. They want to add subsequent event with reference to cultivation in paragraph No. 11 of the W.S. They want to add paragraph No. 11-A to contend that alleged agreements being unregistered, are not admissible in view of Section 17 of Registration Act. They want to add alternate contention with reference to lower price mentioned in alleged agreements and financial capacity of the plaintiff by way of paragraph No 7-A. They contend that though plaintiff has filed evidence affidavit, yet he has not entered into the witness box. Therefore, trial is yet to begin. Proposed amendment is in the nature of clarification and of bringing on record subsequent development. Therefore, it is not going to change the nature of the suit. It will not cause any prejudice to the plaintiff. With such contentions, it is requested to allow this application.

3] Plaintiff has opposed the application by filing a reply vide Exh. 62 in which he has denied all the contents of the application. He contends that defendants have already averred in written statement that they are in possession of the suit property. Thus, their proposed amendment with reference to possession, is not a subsequent event. They want to add such facts by way of amendment which were in their knowledge at the time of filing written statement. They have not given any explanation as to why such facts had not already been pleaded in their W.S. This application is filed at belated stage after commencement of trial to fill up the lacunae. Proposed amendment will cause prejudice to the plaintiff, in case it is allowed. Therefore, plaintiff has requested to reject the application by imposing

compensatory costs.

4] Ld. Advocate for defendants has relied upon following ruling in support of his submissions:-

A] **Mr. Teotonio Faustino Vas Vs. Smt. Ana Mariya Rodrigues 2018(6) ALL MR 582.** In that matter, amendment of written statement was applied for to elaborate the defense taken in written statement and to add additional pleas in support of defense already taken. In that background, it was allowed.

B] **Ashok Ramkrushna Kalbande Vs. Pornima Bhimrao Kevte 2016(5) ALL MR 915.** In that matter, in appeal, amendment of the appeal and written statement was applied for to bring on record subsequent development after passing of the decree. Proposed amendment was found necessary to decide the real controversy involved in that matter. As such it was allowed.

C] **Rajaram Naik Vs. State of Goa 2016 (1) ALL MR 5.** It is observed in this ruling that amendment which is necessary for deciding the real controversy in dispute, has to be allowed at any stage of the proceedings, subject to embargo placed in proviso to Rule 17 Order VI of CPC. Such proviso comes into picture when the court comes to conclusion that the party has not approached the court with due diligence.

D] **Zainabbi Mohd. Bashir Vs. Shivkumar Jaiswal 2022 (1)ALL MR 671.** In that matter, after the evidence of the parties, Trial Court heard the final arguments and thereafter amendment in written statement was applied for to bring on record some facts with reference to which evidence was already led and cross-examination was already made on such evidence. In that background, application was allowed.

5] Ld. Advocate for plaintiff has relied upon the decision of Hon'ble Bombay High Court in the matter of **liquidator, the Maratha Market People's Co-Operative Bank Ltd. Vs. M/s Jijai Estate 2019 (1) ALL MR 884.** In that matter, evidence affidavit of the plaintiff was filed. Thereafter amendment in plaint was sought for. In that background, it was observed that filing of such affidavit in lieu of examination-in-chief, would amount to commencement of trial and therefore, proviso to Rule 17 Order VI of CPC comes into picture. It was observed that facts

which were sought to be brought on record by way of amendment, were within the knowledge of the plaintiff even before the institution of the suit. Thus, amendment was rejected.

6] Questions before me are – as to whether proposed amendment to W.S. is necessary for determination of real controversy involved in this suit and as to whether proposed amendment would cause any prejudice to plaintiff if it is allowed at this stage of the suit ?

7] Record shows that defendant Nos. 1 to 3 have filed W.S. vide Exh. 24 on 16-04-2014. Issues were framed vide Exh. 21 on 14-07-2016. Plaintiff has filed his evidence affidavit in lieu of examination-in-chief vide Exh. 58 on 25-09-2019. Suit was adjourned till 13-11-2019. On 13-11-2019, plaintiff filed pursis Exh. 59 to keep the matter in Lok Adalat. Rojnama of date 14-12-2019 shows that plaintiff and his Ld. Advocate were absent and defendants were present. Thus, matter was not settled and was adjourned till 22-01-2020. On 22-01-2020 P.O. was on leave. Thus, matter was adjourned till 03-03-2020. On that day, adjournment application was filed on behalf of plaintiff. Thereafter matter was adjourned from time to time due to Covid-19. On 25-11-2020, this application Exh. 61 has been filed. Plaintiff has filed reply Exh. 62 on 08-03-2022. Thus, plaintiff has not entered into the witness box for additional examination-in-chief and cross-examination. However, filing of such evidence affidavit amounts to commencement of trial as is held in the ruling relied upon by the plaintiff. Therefore, it needs to be considered as to whether defendants have filed the present application with due diligence.

8] Now coming to the present application, it appears that by way of proposed amendment, defendants intend to add contentions in paragraph No. 2 of the written statement to the effect as to what is revealed by the agreements dated 03-05-2012 and 27-11-2012. They contend that agreement dated 03-05-2012 shows the name of defendant No. 1 and it also bears her photograph as one of the executants. In fact she had already disposed off her share and as such has no interest in the suit property. Despite subsistence of agreement dated 03-05-2012, subsequent

agreement of date 27-11-2012 was prepared. It is not explained by the plaintiff in the plaint as to why subsequent alleged agreement was prepared despite of previous alleged agreement. In fact there was fishy deal in between the plaintiff and husband of defendant No. 2 and husband of defendant No. 3, who have mislead defendant Nos. 2 and 3 to put signatures on blank paper on saying that their signatures are necessary to delete the name of defendant No. 1 from the revenue record and such papers might have been used for preparation of alleged agreements. Thus, defendant Nos. 2 and 3 have never executed any such agreements and such agreements are false and fabricated documents.

9] In written statement Exh. 24, defendants have contended in paragraph Nos. 1 and 2 that defendant No. 1 had already sold out her share and as such had no right, title or interest in the suit property. They have denied execution of above two agreements. They contend that their signatures were taken on blank papers by their respective husbands giving reason to initiate proceeding to delete the name of defendant No. 1 from revenue record and to convert the suit property from Class-II to Class-I category. Such papers were used for preparing alleged agreements. Thus, such agreements are false and bogus and are not admissible in evidence.

10] Thus, in view of above contentions in paragraph Nos. 1 and 2 of written statement Exh. 24, it appears that proposed amendment in the form of addition of contents which are mentioned in paragraph No. 8 of this order, is not going to introduce any new thing in written statement and in fact it appears to be in the nature of elaboration.

11] By way of proposed amendment, defendants intend to add contentions below paragraph No. 7 in written statement to the effect that defendants have denied the execution of alleged agreements and therefore there was no question of readiness and willingness and as such averments with reference to readiness and willingness in plaint, have no substance. In paragraph No. 7 of W.S. Exh. 24 such contentions have already been made. Thus, it appears that defendants intend to add contentions by way of proposed amendment to elaborate the defense which has

already been taken.

12] By way of proposed amendment, defendants intend to add contention below paragraph No. 11 in written statement to the effect that after the death of husband of defendant No. 2, she was in need of money. As such, from the agricultural year 2019, defendant Nos. 2 and 3 are getting the suit property cultivated through Devidas Bhagat on batai i.e. crop share basis.

13] In paragraph No. 11 of W.S. Exh. 24, defendants have contended that defendants are in possession of the suit property and have not handed over possession to the plaintiff and they are getting the suit property cultivated through husband of defendant No. 1 on batai basis. Thus, it appears that they want to bring on record by way of proposed amendment that now they are not getting the suit property cultivated through husband of defendant No. 1 but through some other person. Thus, such amendment is also not going to introduce any new thing. It appears to be a subsequent development.

14] By way of proposed paragraph No. 11-A, defendants intend to add the contention that alleged agreements being unregistered as per Section 17 of Registration Act, are not admissible in evidence. In fact, in paragraph No. 2 of written statement Exh. 24, defendants have already contended that alleged agreements are not admissible in evidence. It is true that they have not specifically mentioned the above section in paragraph No.2. However, such contention as is mentioned in proposed paragraph No. 11-A, is not going to add new thing.

15] By way of proposed amendment, defendants intend to add paragraph No. 7-A in written statement. In such paragraph, they have contended that even for the time being, it is assumed but not admitted that there was any agreement in between plaintiff and defendants, defendants would not have agreed to sell the property at lower price as compared to prevailing market rate. They further contend that plaintiff has nowhere pleaded in the plaint as to how he could raise the fund for payment of sale consideration. These are new contentions in the sense that

defendants have not raised any such contentions in W.S. However, burden is on the plaintiff as per issue Nos. 2 and 3 to prove that he paid earnest amount of Rs. 3,60,000/- and was ready and willing to perform his part of contract. Thus, it is in that sense, plaintiff has to show his financial capacity. Defendants have denied execution of agreements and have contended that such documents are false and bogus. Thus, in support of such contentions, they may lead evidence to show the prevailing market value of the property. Thus, if the proposed amendment which is sought to be added by way of paragraph No. 7-A is considered in this background, it appears that it is not going to change the nature of the suit.

16] It appears that except the fact of cultivation on batai basis through a person other than husband of defendant No. 1, defendants could have brought the other facts on record even before the commencement of trial i.e. filing of evidence affidavit by plaintiff. However, it appears that such facts are not new facts and in fact such facts would amount to further elaboration of the already stated facts. Therefore, considering the present application in the aforesaid background and in view of the fact that plaintiff is yet to enter into witness box, I come to the conclusion for the above reasons that proposed amendment is necessary in the facts and circumstances of this suit and it is not going to cause any prejudice to the plaintiff, even if it is allowed at this stage of the suit. Some costs need to be imposed on the defendants. Therefore, for the above reasons, I proceed to pass following order.

ORDER

This application seeking amendment in written statement, is allowed subject to costs of Rs. 1000/- (Rs. One Thousand only) to be paid to the plaintiff.

Umred.
Dated: 01/01/2025.

[S. G. Landge]
Civil Judge Sr. Dn., Umred,
Dist. Nagpur.

<u>Certificate</u>	
I affirm that the contents of this P.D.F. file are word to word same as per original.	
Name of Stenographer	: Mrs. D.T.Vighne, Stenographer (Grade II)