

Regular Civil Suit No.44/2009
Subhash & other Vs. Nisha and other

ORDER BELOW EXH.No.144
(Passed on 13th of July, 2017)

The defendants No.1 to 4 have moved this application to amend the written statement under Order 6 Rule 17 r/w Order 1 Rule 10 of C.P.C.

2. According to the defendants, prior to filing this suit, the defendants had applied before the revenue authority for partition of the suit property. Thereafter, the Tahsildar, Ramtek passed the order in respect of the partition and the partition in respect of the property in question was effected. However, the order passed by the Tahsildar was challenged by the plaintiffs before the Sub-Divisional Officer, Ramtek and the appeal was allowed. But thereafter, the defendants No.1 to 4 preferred appeal against the order passed by the S.D.O., Ramtek and the said appeal is pending before the competent authority. Thus in short, all the factual aspects regarding the revenue proceeding are sought to be inserted in the written statement by way of this application. Hence, the defendant No.1 to 4 have moved this application.

3. The Learned advocate for the plaintiffs, Shri Fule opposed this application on the ground that the proposed amendment would change the nature of the suit and the application for proposed amendment came to be filed at the belated stage. Hence, he requested to reject the application with compensatory costs.

4. Having perused the application and the record, I heard the Learned advocates for the both sides. In view of the rival pleadings and the documents placed on record, following points are formulated for my determination and I record my findings thereon with reasons as follows :

Sr. No.	<u>POINTS</u>	<u>FINDINGS</u>
1	Whether the proposed amendment is justified ?	Yes
2	What order ?	The application is allowed as per final order.

REASONS

As to point No.1 :

5. In the present suit in hand, the plaintiffs are claiming the ownership in respect of the suit property. So also, the plaintiffs have filed some material revenue documents which are under challenge. In such circumstances, in my opinion, the subsequent and relevant facts regarding the revenue proceeding are required to be elaborated by the concern party. In short it seems that by way of this application, the defendant No. 1 to 4 are going to put forward the subsequent and the relevant facts in respect of the revenue proceeding which have direct nexus to the suit property. Thus it cannot be said that the new case is being projected. So also, it cannot be held that the nature of the suit would be changed if such proposed amendment is allowed.

6. The opposite side opposed the application on the ground that prejudice would be caused to them if this amendment is allowed. But having perused the reply, it is reflected that the plaintiffs have no where denied the facts of revenue proceeding as stated by the defendants.

Moreover, the order passed by the revenue authorities can be read in evidence if they have direct nexus with the property in question. But for this purpose, the relevant facts in this regard must be brought on record. In such scenario, I do not find any justified reason to reject the application in hand. Moreover, the plaintiffs have chance either to rebut the facts stated by the defendants or to adduce the evidence in support of their claim. Thus the proposed amendment would not cause any prejudice to the plaintiffs.

7. There is no doubt that the present application in hand has been filed at the belated stage. But the trial is yet to be concluded and the facts mentioned in this application go to the root of the case. So also, the delay can be compensated by imposing the appropriate costs. Thus only on the ground of delay, this application cannot be rejected.

In view of the discussion noted above, I record my finding in affirmative for point No.1 and proceed to pass the following order.

ORDER

- (i) The application (Exh.No.144) is hereby allowed subject to costs of Rs. 300/-. The costs shall be paid to the plaintiffs and the payment of costs shall be condition precedent.
- (ii) The defendant No. 1 to 4 shall carryout the necessary amendment within the stipulated period and shall file the amended copy of the written statement.

Ramtek
Date : 13.07.2017

(Sujitkumar C.Taide)
Civil Judge, Jr.Dn., Ramtek.

CERTIFICATE

I affirm that the contents of this P.D.F. file Order are same word for word as per original Order.

Name of Stenographer

:- G. S. Dongardive

**Regular Civil Suit No.44/2009
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ORDER BELOW EXH.No.145

(Passed on 13th of July, 2017)

By way of this application, the defendant No. 1 to 4 have sought the permission to cross-examine the plaintiff No.1 on the ground that on 24.03.2017 when the case was fixed for cross-examination of the said witness, the advocate for the defendant No. 1 to 4 could not attend the Court due to his important domestic work. So also, the defendant No. 1 to 4 were unable to appear before the Court due to their illness. Hence, they have moved this application.

2. The Learned advocate for the plaintiffs, Shri Fule opposed the application on the ground that the defendant No. 1 to 4 are trying to prolong the matter on the baseless grounds. Hence, he prayed to reject the application with costs.

3. Having heard the Learned advocates for the both sides, I perused the record. It transpires that the Learned advocate for the defendants had to attend the Tervi of his close relative. Thus the reason for his absence appears to be bonafide. This application is supported by affidavit and therefore, the facts mentioned in this application can be taken into consideration. In such circumstances, it is probable that the defendants might have suffered from illness. Moreover, the defendants have filed this application without any delay. Thus their bonafide intention to conduct the case is reflected. In short, the reasons for not conducting the case on the fixed date are bonafide. Thus in order to have a fair trial, the defendant No. 1 to 4 deserves to have a chance of being heard. In the result, I pass the following order.

Order

- (i) The application is allowed.
- (ii) The defendant No.1 to 4 are hereby allowed to cross-examine the plaintiff No.1.

Ramtek
Date : 13.07.2017

(Sujitkumar C.Taide)
Civil Judge, Jr.Dn., Ramtek.

CERTIFICATE

I affirm that the contents of this P.D.F. file Order are same word for word as per original Order.

Name of Stenographer :- G. S. Dongardive