

MHNG130007422022



R. C. S. No. 26/2022
Bilkis & others V/s. Mumtaj
& Others

Judge Code: MH02592

ORDER BELOW EXH.9.
(Passed on: 04.07.2023)

The plaintiffs have moved this application for amendment in plaint under Order VI Rule 17 of the Code of Civil Procedure, 1908. Defendants have objected the said application by filling their reply at Exh.27. Heard both side at length.

2. By this application plaintiffs contended that, they have filed suit for specific performance of contract related to all that piece and parcel of land bearing Khasra No.122, admeasuring 0.93 H.R. village Dongartal, Tah. Ramtek, District Nagpur. It is further submitted that on very same date of filling of suit, the defendant Nos.1 to 4 and 5(a) have sold the suit land bearing Khasara No.122 to the Safique Ahamad Najir Ahmad Ansari by virtue of register sale deed dated 20.06.2022.

3. It is further contended that proposed amendment will not change the nature of the suit. To avoid the technical difficulties and to meet the ends of justice the plaintiffs want to carried out this proposed amendment. Further, if the proposed amendment is allowed it will not cause any loss to the defendants as they are aware of the said facts. At the same time, if the same is denied it will cause irreparable loss to the plaintiffs and accordingly prayed

for allowing the said application.

4. Defendants have objected the application on grounds that, the relief claimed by the plaintiff in the suit is barred by the law of limitation. The said application is an after thought and liable to be rejected. The said fact is knowing to the plaintiffs at the time of institution of the suit. The transaction between the defendants and proposed defendant are legally and valid and there is nothing to be challenged under the present suit. The plaintiffs failed to satisfy and explain that inspite of due diligence the plaintiffs could not raised the pleading which he wants to incorporate now in the plaint at the time of filing of the suit. The plaintiffs are seeking permission to change the entire pleadings, title clause and prayer by placing new suit on record and in view of the said changes in the pleading, title clause and prayer, the nature of suit would be changed and under any case by seeking amendment to the original suit the nature of the suit and relief claimed cannot be changed in a manners desired by the plaintiffs particularly on making allegation by the plaintiffs. The present application is mischievous, unnecessary, irrelevant and malafide and the same is nothing but an abuse of process of law. The proposed amendment is allowed that the great prejudice would be caused to the defendants. Lastly, prayed for reject the application with heavy cost.

5. Perused application, reply on it and material placed on record, following points arise for my determination and findings thereon are recorded with reasons stated hereinafter.

Sr. No	Points	Findings
1.	Whether the proposed amendment can be allowed?	Yes.
2.	What order ?	As per final order

REASONS

As to points no. 1

6. Perused the application and reply. I duly considered the submission made by both the parties and also gone through the record. Considering this, if we look into the factual matrix of the entire case the plaintiffs have filed present suit for Specific performance of contract against the defendants. By way of proposed amendment the plaintiffs want to bring the subsequent development on record. As such, the reasons mentioned here-in-above by the plaintiffs for seeking proposed amendment are satisfactory the proposed amendment is regarding the subsequent events occurred after the filing of present suit.

7. Further, the proposed amendment is not going to cause any prejudice to the defendants as they will be having opportunity to challenge the contents of the proposed amendment and prove the contrary. As far as the objection about the proposed amendment is bad in law, it is settled position that while considering an application for amendment of pleadings, it is impermissible to examine the merits of the case being sought to be incorporated by way of proposed amendment. Considering the basis of the suit claim vis-a-vis defence the proposed amendment

appears to have a proximate bearing to the fact in issues. The proposed amendment will neither nullify any admissions nor introduce new plea nor will cause prejudice. The objection raised by defendant regarding proposed amendments which deals with legality and merits cannot be considered while deciding present application correct or wrong cannot be considered at this stage as the Court cannot go in to the merits of the amendment.

8. Therefore, in my opinion, in order to avoid multiplicity of proceeding and to controversy involve in the suit. The present amendment is required to be allowed. No prejudice will cause to the defendant, if proposed amendment is allowed. Hence, in answer to point No. 2, I pass following order:-

ORDER

1	The application is hereby allowed.
2	Plaintiffs are directed to carry out proposed amendment in the plaint within the period as prescribed in law.
3	After compliance, the plaintiff to file amended plaint copy alongwith additional copy for defendant. (Order Pronounced in Open Court).

Sd/-

Ramtek
Date:-04.07.2023

(Smt. Dimple S. Saindane)
2nd Jt. Civil Judge Jr. Dn.,
Ramtek

