

COMMON ORDER BELOW EXH.27 AND 29

(Passed on 21.12.2023)

This is an applications filed by defendant no.2 under Order-6, Rule-17 of the Code of Civil Procedure, 1908 (the C.P.C.) for amendment in written statement.

2. Defendant no.2 submitted that, they have filed their written statement and reply at Exh.19, but the fact of execution of registered Will deed dated 19.03.2017 could not be incorporated in the said written statement due to communication gap between defendant no.2 and the then defendant no.1 with present counsel. The said fact is material fact in the instant case. Therefore, the present amendment is necessary. Defendant further submitted that, there is no prejudice will cause to the plaintiff if permission is granted.

3. Previously defendant no.2 filed an application for permission to file additional written statement at Exh.27. But thereafter defendant no.2 filed an application at Exh.29 for considering the application at Exh.27 as amendment application in the written statement instead of filing of additional written statement.

4. Plaintiff objected the application at Exh.27 on the ground that, there is no provision provided in Code of Civil Procedure for filing of additional written statement. Therefore, he prayed to reject the application. But, at the time of filing of say at Exh.29, plaintiff submitted that, it is discretionary power of Court to allow the application. Hence, he prayed for necessary order may be passed and if the Court allow the application, it could be allowed subject to the costs.

5. The learned Advocate of defendant no.2 filed their written argument at Exh.28 and he relied on the judgment of Hon'ble Supreme Court in the case of **Olympic Industries V/s. Mulla Husain Bhai Mulla Akbar Ali and others, (2009)AIR(SC) 2029.**

6. On the contrary, the learned Advocate of plaintiff submitted that, there is no provision in the Code of Civil Procedure for filing of additional written statement. Therefore, the application for filing of additional written statement not maintainable. However, defendant could have file amendment application to carry out the said amendment.

7. Heard both parties. On the rival pleadings of the parties, the following points arise for my determination and I have record my findings thereon for the reasons as follows :-

Sr.No.	<u>POINTS</u>	<u>FINDINGS.</u>
01	Whether the proposed amendment is necessary for the purpose of determining the real question in the controversy between the parties ?	... AFFIRMATIVE
02	What order ?	... As per final order.

REASONS

AS TO POINT NO.1 AND 2 :

8. Considering the material on record, I have taken point no. 1 and 2 together for discussion.

9. Perused of whole record and on going through the averments in the present application and say thereon, it seems that, the present suit is filed by plaintiff for declaration, permanent injunction and restraining

defendants from peaceful possession over the suit property. As per the record, the present suit is pending for evidence of plaintiff. The issues were framed at Exh.22. According to defendant no.2, she wants to amend her written statement in respect of the Will deed which regarding to the suit property executed by defendant no.1. Previously, defendant no.2 filed application at Exh.27 for permission to file additional written statement, but during the arguments and submission of both the parties, the learned Advocate of defendant no.2 filed application at Exh.29 and submitted that, treat the application at Exh.27 as amendment application instead of filing of additional written statement. The plaintiff also submitted that, the Court may allow the application subject to the costs. Therefore, the previous say of the plaintiff as regarding to the objection to file additional written statement, and thereafter, plaintiff not formerly objected the application for amendment in written statement.

10. Thus, as considering the above, the present amendment is regarding to the Will deed which is executed by defendant no.1 in respect of the suit property. Therefore, in my view, the present amendment is necessary for adjudication of the real controversy between the parties. On perusal of record, it appears that matter is pending for evidence of plaintiff. I have gone through the proposed amendment. The contention of application discloses that defendant no.2 want to add the proposed amendment in the written statement. Therefore, no prejudice or loss will be caused to other side. At the same time, whatever delay caused on the part of defendant no.2 for positive hearing of the suit, should not be over sighted and should be saddled with necessary costs. Resultantly, the following order is passed.

ORDER

- [i] Applications (Exh.27 and 29) is allowed subject to the costs of Rs.300/- (Rs.Three Hundred only) which is payable to the plaintiff on or before next date.
- [ii] Defendant no.2 is directed to carry out the amendment in her written statement within 14 days from the date of this order and file amended copy of written statement on record.

Bhiwapur
Date:- 21.12.2023

Sd/-
(S. J. Lad)
Civil Judge Junior Division,
Bhiwapur.
