

MHNS130007922014



R.C.S./1300088/2014

Balasaheb Vishwanath Aaher

Vs.

Rani Mahadeo Kushare

ORDER BELOW EXH.NO.51 IN

R.C.S.NO.88/2014

01] The plaintiff has filed this application for amendment of plaint under O.6, R.17 of Code of Civil Procedure, 1908 (for short “CPC”).

02] **Contentions of the plaintiff are that-**

The defendant is owner of the suit property. She had granted the suit property to the plaintiff on 09/07/2002 for cultivation for the period of 10 years. The defendant has attempted to alienate the suit property to third party. Hence, plaintiff has filed this suit. The plaintiff has asserted that possession of the plaintiff became illegal from 09/07/2012. The said illegal possession is continue till today. On 09/07/2024, 12 years completed. Therefore, the plaintiff has become owner of the suit property by adverse possession. The period of 12 years has completed on 09/07/2024 i.e. after filing of the suit. Therefore, it is necessary to add the said fact in the plaint. Hence, this application.

03] The defendant filed say (Exh.52) and contended that the plea of adverse possession is already pleaded by the plaintiff.

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Adverse possession after filing the suit cannot be considered for claiming right on the basis of adverse possession. Therefore, the application may be rejected.

ARGUMENTS:

04] The learned advocate for the plaintiff argued that merit of proposed amendment cannot be considered at the stage of deciding application for amendment of plaint. Whether plea of the plaintiff is maintainable or not will be decided during the trial. Proposed amendment is necessary to decide real controversy between the party. Hence, the application may be allowed.

05] Learned advocate for the defendant argued that plaintiff has already taken plea of adverse possession. Proposed amendment is unnecessary. Thus, it may be rejected.

DISCUSSIONS:

06] Record shows that issues (Exh.45) have been framed. But, examination-in-chief of the plaintiff is not yet filed. Therefore, trial is yet to be commenced.

07] The suit is for declaration of ownership by adverse possession and permanent injunction. The plaintiff has asserted that he was put into possession of the suit property vide

Khandpatra dated 09/07/2002. The plaintiff is in open, continues possession of 12 years. The defendant has filed suit for possession against the plaintiff bearing RCS No.06/2013.

08] Plaintiff shows that this suit came to be filed on 11/08/2014. By way of proposed amendment, the plaintiff wants to delete para No.4 and substitute the fact that on 09/07/2012 grant of the plaintiff came to the end and the possession was not handed over to the defendant hence, plaintiff's possession become adverse on the said date.

09] It is further sought to be added that the plaintiff's possession since 09/07/2012 is hostile to the defendant's title, open and continues. The plaintiff also wants to delete para No.5, 6 and 11 of the plaint and substitute fact that plaintiff's possession over the suit property since 09/07/2012 is adverse to the defendant.

10] It is pertinent to note that the plaintiff has asserted his adverse possession over the suit property since 09/07/2002 and filed this suit on 11/08/2014 claiming completion of 12 years preceding to filing of suit. By way of amendment, he wanted to substitute fact that his possession become adverse on 09/07/2012 and it is still continues. It is settled law that merit of proposed amendment cannot be looked into at the time of deciding application for amendment. But, in this case the

plaintiff not only want to add subsequent facts but he wants to delete original pleading and substitute new plea.

11] Original plea of adverse possession is totally different from plea of adverse possession sought to be added by way of proposed amendment. Allowing this amendment will amounts to withdrawal of suit and filing new suit, based on totally different facts. Thus, the plaintiff cannot be permitted to introduce new case by way of amendment. The application deserves to be rejected. Hence, I pass following order;

ORDER

- I. Application (Exh.51) is hereby rejected.
- II. Costs on the plaintiff.

Sd/-

(A. J. Patil)

Civil Judge, (Jr. Dn.)
Pimpalgaon (B).

Dated : 23/07/2025

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