

MHNS140007612011



ORDER BELOW EXH. 50 IN RCS NO.104/2011

This is an application by plaintiffs seeking amendment in the plaint. It is contended that, plaintiffs are seeking relief of permanent injunction. Further, they have pleaded all facts mentioned in para 2 to 5 of the plaint. The plaintiffs further contended that, the application moved by plaintiffs seeking interim injunction is already came to be allowed. The Original Plaintiff Bhika Mangalu Raut is no more and his legal heirs, means present plaintiffs are not residing in the village wherein the suit property is situated. But, the defendants are residing in the village wherein the suit property situated. Therefore, by taking dis-advantage of absence of plaintiffs, the defendants have taken possession of the suit property on 20/10/2019, by illegal way.

2. Plaintiffs, by the proposed amendment, want to insert new para No. 6-A in the plaint to mention about the said incident. They also want to add relief of possession by amending relief clause. Plaintiffs also want to insert some contents about valuation of the suit and payment of court fees thereon in respect of new relief of possession, in existing para 9 of the plaint. Plaintiffs are praying for grant of application.

3. Called say of the defendants. They filed their say vide Exh. 51 and thereby resisting the application. They are denying contents of the application. It is contended that, the application is moved to harass defendants. They are denying allegations as to taking possession of the suit land during pendency of the suit. It is contended that, plaintiffs never possessed the suit land. In the present suit, the plaintiffs have taken order of interim injunction in their favour by misleading the Court. In fact, since 18/06/1991, deceased Laxman Kevji Bhoje and after his death, defendants are in continuous possession of the suit property. Therefore, the contents mentioned in the application are not true and correct. It is further contended that if, the proposed amendment is allowed, it would change entire nature of the suit. The present matter is 9 years old, but, plaintiffs were failed to proceed with the matter, hence the matter was also kept for dismissal of the suit. The suit is at the stage of hearing since last 4 to 5 years, but plaintiffs failed to file evidence affidavit in the suit. Thus, the application is moved to prolong the matter and to harass defendants. Therefore, they are praying for rejection of application, in the alternate, if the application is allowed then it shall be allowed subject to cost of Rs. 15000/- .

4. Heard both sides. I have gone through pleadings of the parties and documents on record. It is true that, plaintiffs are seeking relief of permanent injunction. Thus, at present, it is simplicitor suit for injunction, wherein application at Exh. 5, seeking interim injunction, has been allowed. Now, it is contention of plaintiffs that, during pendency of the suit, defendants took possession of the suit land by illegal way and as such, they intend to

seek relief of possession. Defendants are denying the same. Defendants are submitting that, they are in continuous possession of the suit property since 18/06/1991. Deceased Bhika Manglu Raut and after his death, plaintiffs were never possessed the suit land and as such, question does not arise as to take possession of the suit land by defendants. While deciding the application, it is required to be noted that, the point for consideration is limited only to the extent, as to whether proposed amendment can be allowed? The issue of possession would be adjudicated by giving opportunities to either parties to adduce evidence. At this juncture, plaintiffs came with the case that, subsequent event has been occurred during pendency of the suit and as such, they want to bring it on record by way of pleading, by inserting new para in the plaint and resultantly, they also want to claim relief of possession. At this stage, it is not expected to verify claim of plaintiffs. On the other hand, defendants would have an opportunity either to amend their written statement or to file additional written statement to contest the matter. Therefore, it would not cause prejudice to right of defendants.

5. So far as change in nature of suit is concerned, it is true that, proposed amendment would change nature of the suit. Presently, it is suit for injunction and after amendment, it would be suit for possession. However, it cannot be a sole ground for rejection of application, particularly, when it would not cause prejudice to the right of defendants and it is necessary to avoid multiplicity of proceeding. When parties are already appeared before the Court, and litigating against each other, in respect of same subject matter, then it is not desired to dis-allow them to

litigate in respect of same subject matter, only for different relief. Thus, avoiding multiplicity of the proceedings is also one of the vital aspect to be considered while deciding the present application.

6. The next thing is that, the suit is for perpetual and mandatory injunction. The issues have been framed in the suit. Thereafter, the amendment application has been filed by plaintiffs. Therefore, while deciding the application proviso of O-6 R-17 of the Code of Civil Procedure would come in to play. The said proviso contemplates that, no application for amendment shall be allowed, after trial has been commenced unless the court comes to the conclusion that, despite of due diligence the party could not have raised plea before the commencement of trial. In the present suit, the plaintiffs are claiming the additional relief of possession on the basis of sub-sequent arose between the parties. Moreover, the defendants are resisting the application by claiming that, they are in possession of the suit property. Hence, it will be decided at the time of final hearing of the suit. Though the suit at the stage of hearing, the evidence of the parties yet to be started. As, I have discussed above, the proposed amendment will not caused prejudice to the rights of defendants. Though the proposed amendment would change nature of the suit, but the aspect of multiplicity of the proceedings is also required to be considered while deciding the present application. Thus, at this stage, as per my view to decide the real controversy between the parties, to avoid the multiplicity of proceeding and to decide the dispute of the parties in one suit the amendment sought by plaintiffs is liable to be allowed. No doubt, the application is filed by plaintiffs at the stage of hearing, hence, it

is justifiable to allow the application with cost. Hence, I pass following order :-

ORDER

1. The application is allowed subject to cost of Rs. 1000/-.
2. The plaintiffs to carry out amendment within 14 days and shall supply amended copy of the plaint.
3. Plaintiffs to pay cost to defendants.

Dindori.
Date :- 25/02/2021

(Smt.G.S. Bora)
Jt.Civil Judge, Jr.Dvn.,Dindori.