

R.C.S. No.8/2015

Dattu Arjun Nirbhavne etc. 1

Vs.

Tukaram Aananda Sonawane @

Tukarm Arjun Nirbhavne.

Order Below Exh. 80

The present application is filed by the plaintiff seeking amendment of the plaint under order VI Rule 17 of the Code of Civil Procedure.

2. The plaintiffs contend that the present suit is filed by them against the defendants for possession and perpetual injunction. The matter is at the stage of hearing. During the pendency of the case it came to the knowledge of the plaintiff that on 31/12/2014 defendant No 1 alienated the suit property Gat No. 252 to Bhushan Kautik Pagar. The plaintiff was under the impression that only agreement to sell has been executed in respect of Gat No. 252. The plaintiff did not have knowledge about the sale-deed in respect of Gat No. 252. Hence, contention regarding the sale-deed is not mentioned in the present suit. Also, Bhushan Kautik Pagar who is the purchaser of the suit property Gat no. 252 was not added as a party in the present suit. Recently, the plaintiff became aware that sale-deed in respect of Gat No. 252 is executed. Also the present suit does not mention date of marriage of defendant no. 1 namely Radhabai's marriage and the date when Radhabai was deserted by father of defendant no. 1 late Arjun. Hence, the plaintiff seeks to incorporate the pleadings in respect of the above contentions. The plaintiff also seeks to implead Bhushan Kautik Pagar and Yogesh Laxman Pawar as defendants in the present suit. The plaintiff also seeks to amend prayer clause seeking declaration that sale-deed executed by

defendant No. 1 is not binding on the plaintiff. Hence, the plaintiffs prayed that the present application be allowed.

3. Defendant filed his say at Exh. 82 and submitted that the present suit is at the stage of hearing. Sale-deed in respect of Gat No. 252 was executed on 31/12/2014 and the present application is filed on 18/1/2020 i.e. after period of five years. Plaintiff has not mentioned the ground for said delay. The plaintiff had filed amendment application on 23/2/2018. However, the plaintiff did not seek to amend the contentions made in the present application in the said application. The sale-deed was executed in the year 2014. However, the plaintiff is seeking the present amendment after five years. As per the provision of Indian Limitation Act the said relief should have been sought within three years. Hence, the present application is not tenable. The present application is filed only to delay the proceedings. Hence, it be rejected.

4. Ld. Adv. for the plaintiff argued that the present suit is filed for declaration and perpetual injunction. Pleadings which the plaintiff wants to incorporate by way of present amendment is in respect of subsequent developments. Hence, the present application needs to be allowed. If, the present application is allowed no prejudice will be caused to the defendants. The defendants are at liberty to file additional written statement to the amended plaint. Hence, the present application be allowed. Ld. Adv. for the plaintiff relied on citation *Bharat Petroleum Corporation Ltd. Vs. Precious Finance Investment Pvt. Ltd. 2007 (1) BCJ 111* wherein it was held that “While dealing if the application under Order 6 Rule 17 of C.P.C. filed after commencement of trial seeking amendment of the pleadings the principals/guideline laid down before 1/7/2002 by the Supreme Court and High Court in a catena of decisions should be followed/observed while allowing

or rejecting such application particularly if the amendment is found to be necessary for the purpose of determining the real questions in controversy between the parties.” He also relied on the citation Mahindarkumar Mehra Vs. Rooprani Mehra & Ors. 2018 SAR (Civil)220 wherein it was held that “object of newly inserted Rule 17 is to control filing of application for amending the pleadings subsequent to commencement of trial object therefore being that when evidence is laid on pleadings in a case, no new case be allowed to be setup by the amendments proviso however contents an exceptions by reserving right of the court to grant amendment even after commencement of the trial when it is shown that in spite of diligence the said pleas could not be taken earlier.” He also relied on the case-law Shri. Rajaram Naike Vs. The State of Goa & Ors. 2016 (1) All M.R. 5 wherein it was held that “amendment necessary for deciding the real controversy in dispute have to be allowed at any stage of the proceedings.” He also relied on the citation Olga Roadrigues & Ors. Vs. Christopher Pinto & Ors. 2018 (1) All M.R. 520 wherein it was held that “Rule of amendment is essentially rule of Justice, equity and good conscience power of amendment should be exercised in larger interest of doing full and complete Justice to parties before court, courts to not go in to correctness or false sitting of case in amendment but only look at whether amendment is necessary for determining real question in controversy between parties provided it does not prejudice or caused in Justice to other side.”

5. Per contra Ld. Adv. For the defendants Shri. A.R. Patil argued that right of pre-emption cannot be demanded by way of filing the present suit. The trial has commenced in the present matter. Hence, the amendment cannot be allowed at the present stage. Citation referred by the plaintiffs is

not applicable to the case at hand. Hence, he prayed that the present application be rejected.

6. Perused the application and say. Heard ld. Adv. for the plaintiffs and ld. Adv. for the defendants. At this juncture it is necessary to discuss the provisions of order VI Rule 17 of Code of Civil Procedure.

Order VI Rule 17 of C.P.C. reads as follows.

Amendment of pleadings-The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

7. As per the above provision, amendment may be allowed at any stage of the proceedings if it is necessary for the purpose of determining real question in controversy between the parties. The amendment which the plaintiffs have sought is in respect of alienation of the suit property. As per provisions of order 6 Rule 17 Court may at any stage of the proceedings allow either party to alter or amend his pleadings if such amendments are necessary for the purpose of determining the real questions in controversy between the parties. The amendment which plaintiff is seeking is in respect of the alienation of the suit property. Therefore the said amendment is necessary to determine real question in controversy between the parties. The defendants have raised objection that the plaintiff had taken objection to the alienation of the suit land in the year 2014 before revenue authorities. Hence the plaintiff cannot seek relief in respect of the same

after period of 5 years and the plaintiff cannot seek such relief before civil court. However the objections raised the defendants can only be decided on merit during trial after both the parties are provided with the opportunity to lead evidence. At this juncture it is not necessary to go into the merits of the case. At this stage it only has to be seen whether the amendment is necessary to determine real question in controversy between the parties. As already discussed, the said amendment is in respect of alienation of the suit properties, hence it is necessary to determine real question in controversy between the parties. Moreover if the amendment is allowed, it will not change the nature of the suit. However, if the present application is rejected, there will be multiplicity of the proceedings. Hence the application deserves to be allowed. However, costs needs to be imposed on the plaintiffs for the delay caused in filing present application.

In the light of the above discussion, I pass the following order-

ORDER

1. Application (Exh. 80) is allowed with costs Rs. 1000/- (in words Rupees One thousand only)
2. The plaintiff to pay costs to the defendant.
3. The plaintiff is directed to carry out the amendment and file the amended plaint on or before the next date.

(Dictated and pronounced in open court)

Sd/-

Place : Kalwan
Date : 07.01.2022

(A. C. Joshi)
Jt. Civil Judge, J.D., Kalwan