

R.C.S. No.38/2015

Uttam Santosh Nirbhavne

Vs.

Tukaram Arjun Nirbhavane & Ors.

Order Below Exh. 57

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

02. The plaintiff contends that the present suit is filed by them against the defendants for declaration 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 after the suit was filed, defendant No 1 illegally alienated the suit property to defendant No. 2. The plaintiff had apprehension that defendant No. 1 is about to alienate the suit property to the third person. Hence, the plaintiff filed application before Additional Collector, Malegaon taking objection for the said alienation. The said application was disposed of on 13/3/2017. The plaintiff filed appeal against the said order before Additional Commissioner, Nashik. It was decided on 29/9/2016. The plaintiff filed appeal against the said order before Revenue Officer, Mumbai and the same is pending. All these incidents took place during the pendency of the present suit. Hence, the plaintiff wants to carry out amendment in the plaint to incorporate the contentions regarding the same. If the said amendment is allowed it will not change the nature of the suit. Hence, the plaintiff prayed that the present application be allowed and he be permitted to carry out the amendment.

03. The defendant No. 1 filed his say at Exh. 59 and submitted that as per the contentions of the plaintiff in the present application, he filed objection for alienation of the suit property before Additional Collector, Malegaon on 3/12/2014. Hence, the plaintiff was aware about the same in the year 2014 i.e before filing of the present suit. 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. By way of the present amendment plaintiff is seeking prayer that permission given by Additional Collector, Malegaon on 18/3/2015 is not binding him. However, the plaintiff cannot seek the said relief in Civil Court. Hence he prayed that present application be rejected. Defendant No. 2 filed his say to the present application at Exh. 61 and submitted that suit land Gat No. 97 and Gat No. 252 came to the share of defendant No. 1 vide partition. Defendant No. 1 alienated the said lands to defendant No. 2 vide sale-deed after obtaining necessary permission from Additional Collector, Malegaon. The plaintiff was aware about the permission on 3/12/2014 itself. 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. Hence, he prayed that the present application be rejected.

04. 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.”

05. 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.

06. 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.”

07. 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 by defendant no. 1 in favour of defendant no. 2. The amendment which the plaintiff wants to seek is also in respect of the regarding the developments

in the applications and appeals before revenue authorities. The same are also in respect of the suit properties. 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. 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. 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. 57) is allowed with costs Rs. 1000/- (in words Rupees One thousand only)
2. The plaintiff to pay costs to the defendants.

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