

ORDER BELOW EXHIBIT 71

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

2. The plaintiff contends that he is the owner and in possession of the suit land by virtue of registered will deed executed in his favour by father of defendant no. 1, late Shri. Mangu Mali. The defendants are causing obstruction to his peaceful possession. Hence he has filed the present suit against the defendants for declaration and perpetual injunction. The plaintiff further contends that during the pendency of the present suit, defendant no. 1 with the consent of defendant no. 3 to 5, transferred the suit land to defendant no. 2 by way of sale deed dated 16-08-2014 for consideration of Rs.10,67,000/-. The plaintiff contends that the said transfer is illegal and void. Hence he seeks to amend the pleadings regarding cause of action of the suit, title of the suit, prayer clause of the suit and pleadings related to payment of court-fees

3. Defendant no. 2 failed to file his say on the present application, hence no say order was passed against him on Exh. 71. Defendant no. 1 and 3 to 5 filed their say on Exh. 71 itself. They submitted that the present application and grounds mentioned therein are illegal, hence the application be rejected.

4. Ld. Adv. for the plaintiff argued that after filing of the present suit, the suit land was transferred, hence the plaintiff is moving the present application at this belated stage. The government valuation mentioned on the sale-deed of the suit land dated 16-08-2014 is Rs, 10,67,000. Hence the suit is not within the pecuniary jurisdiction of this court. Hence the plaintiff seeks the amendments mentioned in the present application. Hence he prayed that the application be allowed.

5. Per contra Ld. Adv. for the defendants argued that the suit land belongs to scheduled tribes hence it cannot be transferred by way of will. As per section 36 and 36-A of the Maharashtra Land Revenue Code, the Civil Court does not have jurisdiction to try and entertain the present suit which is in respect of the schedule tribe land. The plaintiffs have sought the amendment that the title of the suit be amended as special civil suit, however the plaintiff has not paid the appropriate court fees for the same. The plaintiff had already filed an application under Order 1 Rule 10 for impleading parties to

the suit. The plaintiff could have moved the present application at the time of filing application under order 1 rule 10. Hence now amendment cannot be sought again on the same ground. Thus ld. Adv. for the defendants prayed that the application be rejected.

6. Perused the application, say and documents filed on record. Heard ld. Adv. Shri. A.V. Junnare for the plaintiff and ld. Adv. Shri. A.R. Patil and ld. Adv. G.K. Jadhav 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, however as per the proviso to order VI Rule 17, in order to allow the amendment application after the commencement of trial, the party seeking the amendment has to show its due diligence. In the present case, the trial has already commenced, hence the plaintiff has to show that despite his due diligence he could not have raised the matter before commencement of the trial. In the present case, admittedly the sale-deed was executed by defendant no. 1 in favour of defendant no. 2 on 16-08-2014 i.e. after the completion of evidence of PW1. Since, the said sale-deed was executed during the pendency of the present suit and after commencement of trial, there was no chance that the plaintiff could have raised the matter and filed the present application before commencement of trial. Hence in the present case, in spite of due diligence, the plaintiff could not have raised the matter before the commencement of trial.

8. By the said amendment, the plaintiff seeks to amend several paragraphs in the plaint. Firstly he wants add Para no. 5A in the plaint whereby he wants to amend the

plaint so as to incorporate pleadings in respect of the said sale-transaction between defendant no. 1 & 2. Admittedly the said sale-deed was executed by defendant no. 1 in favour of defendant no. 2 in respect of the suit land. Thus the said transaction is in respect of the suit land and it has taken place between the parties to the suit. Thus amendment in order to incorporate the facts related to the said sale-transaction is very much essential for effectively deciding the present suit. Thus it is necessary to allow the plaintiff to incorporate in the plaint, the facts related to the said sale-transaction for the purpose of determining the real questions in controversy between the parties. Hence proposed amendment no. 4 deserves to be allowed.

9. Further, the plaintiff seeks to amend the cause of action mentioned in Para no. 7 and reliefs mentioned in prayer clause i.e. Para no. 11. It is settled law that any amendment seeking to introduce a cause of action, which arose during pendency of the suit, may be permitted in order to avoid the multiplicity of the suit. It is also settled law that amendments should be allowed if an application is moved at a pre-trial stage and even at a later stage if the party wants to introduce the facts in respect of subsequent development as it would be necessary to avoid multiplicity of the proceedings. In the present case, the sale transaction took place during the pendency of the suit. Hence the new cause of action arose during the pendency of the suit and it is a subsequent development which took place after the suit was instituted and trial was commenced. Hence in my view, considering the peculiar facts of the present case, in the interest of justice and to avoid the multiplicity of the proceedings, the proposed amendment no. 5 and 7 deserves to be allowed. Consequently the plaintiff has also sought to amend title of the plaint by adding the words 'for the declaration that the sale-deed is illegal'. The said amendment is in consequence of the above amendments and hence the said amendment i.e. proposed amendment no. 3 needs to be allowed.

10. Further, the plaintiff has also sought amendment in Para no. 7 by adding Para no. 7A which is in respect of computation of court fees. The plaintiff has valued the relief of declaration that 'the sale-deed is illegal' at Rs. 1000 and he mentions in the said proposed amendment that the court-fees of Rs. 200 is paid for the said relief in addition to the court-fees paid earlier. As per section 6(iv)(j) of the Maharashtra Court-Fees Act, 1959, prima-facie, the valuation and court-fees mentioned by the plaintiff appears to be correct. Moreover at this stage it is not necessary to go into the merits of the suit-

valuation and court-fees. At this stage, only whether the proposed amendment is in consonance with the provisions of order VI rule 17 has to be seen. Hence there is no harm in allowing the said amendment and hence proposed amendment no. 6 deserves to be allowed.

11. Further, the plaintiff seeks to insert words 'Special Civil Suit' instead of 'Regular Civil Suit'. He also seeks to amend the title 'In the Court of Civil Judge Senior Division, Nashik' instead of 'In the Court of Civil Judge Junior Division, Kalwan. However, the present suit is filed for the declaration in respect of the ownership of the suit land, for further declaration that the sale-deed is illegal and not binding on the plaintiff and further for relief of perpetual injunction. Thus the plaintiff seeks declaration as to ownership of the suit land, which is an agricultural land. As per section 8 of the Suit Valuation Act, 1887,

Where in suits other than those referred to in [Paragraphs (v), (vi) and (x) and clause (d) of paragraph (xi) in section 6 of the Bombay Court-fees Act, 1959 court-fees are payable ad valorem under the Bombay Court-fees Act, 1959] the value as determinable for the computation of court-fees and the value for purposes of jurisdiction shall be the same.

12. Since the suit land is an agricultural land, for determining valuation of the suit for the purpose of jurisdiction, section 6 (iv)(d) and section 6(v) of The Maharashtra Court-Fees Act, 1959 will be applicable to the present case. Section 6(iv)(d) of the Act reads as follows :

for ownership etc. Of immovable property, etc.- In suits for declaring in respect of ownership, or nature of tenancy, title, tenure, right, lease, freedom or exemption from, or non-liability to, attachment with or without sale or other attributes, of immovable property, such as a declaration that certain land is personal property of the Ruler of any former Indian State or public trust property or property of any class or community one-fourth of ad valorem fee leviable for a suit for possession on the basis of title of the subject-matter, subject to a minimum fee of [one hundred rupees]:

Provided that if the question is of attachment with or without sale the amount of fee shall be the ad valorem fee according to the value of the property sought to be protected from attachment with or without sale or the fee [sixty rupees], whichever is less :

Provided further that, where the defendant is or claims under or through a limited owner, the amount of fee shall be [one third] of such ad valorem fee, subject to the minimum fee specified above :

Provided also that, in any of the cases falling under this clause except its first proviso, when in addition any consequential relief other than possession is sought the amount of fee shall be one half of ad valorem fee and when the consequential relief other than possession is sought the amount of fee shall be one half of ad valorem fee and when the consequential reliefs also sought include a relief for possession the amount of fee shall be the full ad valorem fee :

Section 6(v) of the Act reads as follows :

for possession of lands, houses and gardens.- *In suits for the possession of land, houses and gardens-according to the value of the subject-matter; and such value shall be deemed to be, where the subject-matter is a house or garden-according to the market value of the house or garden and where the subject-matter is land, and -*

(a) where the land is held on settlement for a period not exceeding thirty years and pays the full assessment to Government-a sum equal to [forty times] the survey assessment;

(b) where the land is held on a permanent settlement, or on a settlement for any period exceeding thirty years, and pays the full assessment to Government-a sum equal [eighty times] the survey assessment; and

(c) where the whole or any part of the annual survey assessment is remitted-a sum computed under sub-paragraph (a) or sub-paragraph (b), as the case may be, in addition to [eighty times] the assessment or, the portion of assessment so remitted;

13. As per combined reading of section 6 (iv)(d) and section 6(v), it becomes clear that the present suit is to be valued for the purpose of jurisdiction as well as for the purpose of payment of court-fees as per survey assessment of the suit land and not as per its market value. As per 7/12 extract of the suit land, its survey assessment is Rs. 4.13 and hence the suit will be valued in multiples of Rs. 4.13 which will be less than Rs. 1000/-. Thus the present suit is within the pecuniary jurisdiction of this court.

14. Now, another declaration sought is that the sale-deed is illegal and hence not binding on the plaintiff. The present case is not such where the executant has sought for cancellation of the sale-deed. In the present case, the plaintiff has sought mere declaration that the sale-deed is illegal and not binding upon him. Here the subject matter of the suit is not the suit land. The subject matter in the present case is the relief claimed that the sale-deed is illegal and not binding on the plaintiff. Now the said relief being the subject matter of the present suit, is not susceptible to the monetary evaluation. AS per section 6(iv)(j) of the Maharashtra Court-fees Act,

In suis where declaration is sought, with or without injunction or other consequential relief and the subject-matter in dispute is not susceptible of monetary evaluation and which are not otherwise provided for by this Act [ad valorem fee payable, as if the amount or value of the subject-matter was [one thousand rupees;]]

In all suits under clauses (a) to (i) the plaintiff shall state the amount at which he values the relief sought, with the reasons for the valuation;

15. Hence provisions of section 6 (iv)(j) of the Act will be applicable in the present case and hence the said relief will be valued at Rs. 1000/-. Thus considering all the reliefs sought by the plaintiff, the suit is within the pecuniary jurisdiction of this court. Hence the amendments sought by the plaintiff in respect of substituting 'regular civil suit' for 'special civil suit' and 'in the court of civil judge junior division Kalwan' for 'in the court of civil judge senior division, Nashik' cannot be allowed. Hence proposed amendment no. 1 and 2 deserves to be rejected.

16. At this juncture, it is also necessary to discuss if there is any delay in filing the present application. On the perusal of the record it appears that on 7-10-2014 the plaintiff himself had made application Exh. 34 to implead defendant no.2 to 5 as party to

the present suit, mentioning in the said application about the said sale-transaction. Thus the plaintiff could have sought the amendments which he is seeking by way of the present application way back in the year 2014 when he got the knowledge of the said sale transaction. However the plaintiff filed the present application on 15-02-2018. Thus the plaintiff has caused considerable delay of more than 3 years in seeking the present amendments. However considering the necessity of the present amendment for purpose of determining the real controversy between the parties and also to avoid the multiplicity of the proceedings it is necessary to allow the proposed amendment no. 3 to 7 sought by the plaintiff. Also, if the said application is allowed, it would not cause any prejudice to the defendants. However if the said application is rejected, it will be unjust to the plaintiff as he would be restrained from raising the further developments which took place during the pendency of the suit and over which the plaintiff did not have any control. Further, the delay can be compensated in terms of money. Thus costs needs to be imposed on the plaintiff considering the delay in filing the present application.

16. Though it is not mentioned in the say filed by the defendants, ld. Adv. for the defendants orally argued that the civil court does not have jurisdiction to try the present suit in respect of the tribal land. However whether the suit land is tribal land or not is a question of merit which will be decided while deciding the suit on merit. The present application is for amendment and hence only whether the proposed amendment is in consonance with provisions of order VI rule 17 has to be seen at this stage

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

ORDER

1. Application (Exh. 71) is partly allowed with costs Rs. 1000/- (in words Rupees One Thousand only)
2. The plaintiff to pay costs to the defendants.
3. The proposed amendment no. 3 to 7 mentioned in the application (Exh. 71) is allowed.
4. The proposed amendment no. 1 and 2 mentioned in the application (Exh. 71) is rejected.

5. The plaintiff is directed to carry out the amendments and file the amended plaint on or before the next date.

(Dictated and pronounced in open court)

Sd/-xxx

(A. C. Joshi)

Place : Kalwan

Date : 04.06.2019

Jt. Civil Judge, J.D., Kalwan