

RCS 135/2018
Dashrath vs. Sangita & Ors.
MHNS230019672018

ORDER BELOW EXHIBIT-26

The present application is moved by the defendant no. 1 for amendment of written statement.

02 Read application and say. Heard both side. Following point arise for determination for which I have given my findings for the reasons stated thereafter :

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
01.	Whether the defendant no. 1 is entitled to amend the written statement ?	...Yes
02.	What order ?	...Application is allowed

REASONS

As to Point No.01:-

03 The Learned for the defendant no.01 has submitted as per contents in the application. He submitted that due to oversight the defendant no. 1 has failed to take defence of non-joinder of necessary parties. Therefore she wants to amend written statement. No prejudice would cause to the other party.

04 The Learned counsel for the plaintiffs argued as contended in say Exh. 28. He submitted that the application is false and vague. The written statement cannot be amended. The defendant has right of counter-claim as per Order 8 Rule 6 CPC. The application is not supported with application for condonation of

delay. To prolong the matter the defendant has made this application. He prayed for rejection of the application.

05 I have considered argument advanced by both parties. I have also gone through the contention of both parties.

06 The plaintiff has instituted suit for declaration that the Will deed is illegal and not binding on them as well as for declaration that plaintiffs and defendant no. 2 to 17 are owners of the suit property and for perpetual injunction.

07 On the other hand, the defendant no. 1 has filed her written statement and stated that Sundrabai has executed Will in her favour and accordingly entry of the same has been taken in record of rights, after death of said Sundarabai. She is in possession of the suit property.

08 Plaintiffs have opposed the application on the ground that the written statement cannot be amended. He has relied on one leaflet wherein it is stated that amendment of written statement for substitution of some new paragraphs, which would introduce entirely different new case and sought to displace the plaintiff from completely from admission made by them in their written statement, is liable to be rejected. However on perusal of the proposed amendment, it appears that the defendant no. 1 wants to amend the written statement so as to take defense of non-joinder of necessary party. The defendant can take multiple defences. Only he cannot amend his written statement to withdraw his admission or to introduce completely new case. But it is not the case with the case in

hand. Further, whether the proposed defence taken by the defendant no. 1 has any merit or not, can be decided only after recording evidence at final stage.

09 Further the case is at initial stage. The trial is yet to commence. Admittedly, defendants have various opportunities to amend the written statement at the earliest. However, delay in seeking amendment of written statement can not be a ground for refusing the amendment. Moreover it would not change the nature of the case. Therefore, no prejudice would cause to the other party, if the application is allowed. However, the other party can be compensated for the delay caused.

10 While deciding application for amendment, whether the proposed amendment is necessary for adjudicating real controversy between the parties has to be seen. Moreover to decide case on merit, and to avoid multiplicity of litigation, and to decide all dispute between parties in single proceeding, the amendment appears to be necessary. Hence, from above all discussion I have answer point no.01 in the affirmative.

As to Point No.02:-

11 As stated above, the defendant no. 1 entitled to carry out the proposed amendment. Therefore, this application is entitled to be allowed. Hence, I proceed to pass the following order:

ORDER

1. The application Exh.26 is allowed.
2. The defendant no.01 is permitted to carry out the amendment

within limitation period.

3. The defendant no.01 to pay costs of Rs.300/- to the plaintiff.

Date 14.02.2023

(Manjusha M.Alone)
Civil Judge Junior Division
Igatpuri