

ORDER BELOW Exh.105
CNR No. MHPU10-000795-2010

1

R.C.S. No. 228/2010
Old R.C.S. No. 01/2004

Dnyaneshwar Kondiba Londhe and other

-Vs.-

Pimpri Chinchwad Municipal Corporation and others

ORDER BELOW Exh.105
(Passed on dated:- 27/02/2020)

1] This application is filed by the defendant no.2 to 5 under order 6 Rule 17 of Civil Procedure Code, for the amendment in counter claim.

2] It is the contention of the defendant no.2 to 5 that during the pendency of counter claim Special land acquisition officer has passed an award for the portion of land admeasuring 335 sq.mtr. out of land Survey no.5/1 of village Bhosari. This defendant also received the compensation amount from Special land acquisition officer for acquired portion. It is further contention of defendant that original land owner Shri. Bapu Dhondiba Dalvi has conveyed the land Survey no.5/1 to the Vishwanath Pandurang Landage through minor guardian Pandurang Sahadu Landage for the sale consideration of ninety nine rupees. After his demise his son Dnyanoba Bapu Dalvi acknowledge the ownership of Vishwanath Pandurang Landage over Survey no.5/1 effected the mutation entry no.8378 in the year 1976. Thereafter in the year 2018 said Dnyanoba Bapu Dalvi has again confirmed the said fact by executing the register sale-deed in the name of defendant no.2 to 5 being the legal heirs of Vishwanath Pandurang Landage. So the defendant wants to amend the pleading in the counter claim by incorporating para no.2 A and 2 B after existing para no.2 in the counter claim. They further contends that said amendment will not be change the nature of suit. Hence they prayed to allow present

application.

3] Plaintiffs have not given their say to the said application inspite of sufficient opportunity till today therefore application proceeded without their say.

4] Appilcation is supported with affidavit. Peruse the application and record. Heard Learned Advocate for the defendant.

5] From perusal of record it appears that suit came to be filed in the year 2004 and the award passed and acceptance of compensation amount for the acquired portion is on 31.07.2007 which means that it has taken place during the pendancy of the suit.

6] After considering counter claim and this application it appears that fact mentioned in this application in respect of how land Survey no.5/1 conveyed from original owner to the Vishwanath Pandurang Landage i.e. father of defendant no.2 to 5 and how they become owner and possessor of the land Survey no.5/1 by excuting sale-deed this fact is not mentioned in the counter claim. At this stage it is necessary to see whether defendant no.2 to 5 are introducing a new case and change the nature of suit by amending the counter claim. However looking to the nature of proposed amendement it does not seem to me that the defendants are creating an altogether new case.

7] In the light of above observations, at the cost of repetition, it is clear that defendants have not introducing any new case but the

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3

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proposed amendements are necessary for the purpose of determining the real question in controversy between the parties and also to avoid multiplicity of proceedings. No prejudice is likely to be caused to the plaintiff as they would definitely get an opportunity to clarify on this aspect by adducing evidence if they chooses. Thus, I do not see any impediment in allowing this application. Therefore this application deserves to be allowed. Hence I pass the following order.

ORDER

- 1] Application is allowed.
- 2] Defendant no.2 to 5 to carry out the proposed amendment in their counter claim within 14 days and file the copy of amended counter claim.
- 3] Cost in cause.

Dated: 27/02/2020.

(Smt. V. R. Mane)
Civil Judge Junior Division
P.C.M.C. Court, Akurdi, Pune.

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4

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CERTIFICATE

“I affirm that the contents of this P.D.F. file Order are same word for word as per original Order”.

Name of Stenographer :- Smt. S. S. Gupte

Court Name :- Smt. V. R. Mane
(J.M.F.C.) Civil and Criminal Court (P.C.M.C.),
Akurdi, Pune.

Date :- 27/02/2020

Order signed by
presiding officer on :- 27/02/2020

Order uploaded on :- 28/02/2020