



ORDER BELOW EXH.169 IN R.C.S.No. 131/2003

Tukaram Shinde Vs. Sitaram Shinde

1. This is an application Under Order 6 Rule 17 of Civil Procedure Code filed by Defendant No. 5 & 6. According to Defendant No.5 & 6 the original suit is for partition, possession and injunction in that under Order 1 Rule 10 suit these Defendant No. 5 & 6 by making third party application, same being allowed has appeared and filed their written statement along with counter claim. The counter claim is at exh. 91. The counter claim is with prayer of declaration of ownership & injunction. During pendency of suit, on revenue side there have been proceedings with regard to suit property. Appeals and applications were made at revenue side. The statements, maps, measurements & records were created based on which the Revenue Department and T.I.L.R. offices and consolidation scheme related observation were made. The said proceeding were Lis pendence. The said proceedings were of the year 2021 & 2022 the same needs to be brought on record for effective decision of counter claim suit. Hence prayed for allowing amendment in counter claim.

2. The plaintiff filed his say for this application at exh. 173. The Defendant No.2 & 3 have adopted the same that of plaintiff. According to plaintiff the application is time barred. The Defendants 5 & 6 have appeared in the suit in 2018. By making various unnecessary applications have the delayed to proceed in the matter. They were given strict direction to lead the evidence yet till date have not as for prayer of amendment sought in counter claim, the same is with regard to revenue

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proceedings. Those proceedings do not have any force in civil court but are of persuasive value. Those documents can be adduced at any stage. There are no requirement to amend the pleadings. This application is nothing but a delay tactic used by Defendant No. 5 & 6. This application devoid of merit same be rejected.


3. Heard both sides. Perused the written notes filed by Defendant No. 5 & 6 at exh. 180. In view of present application. Also gone through the record. The amendment sought by the defendant in the counter claim is with regard to revenue proceedings and decision given based on various statements, measurements and maps prepared. Indeed these documents are of persuasive value based on credibility of evidence for this court. The said amendment is with regard to this proceeding that have taken place nearly 3 years ago, but the Defendant No. 5 & 6 failed to take prompt steps of amendment. Justification is delay is nowhere mentioned in the application.

4. It is also cardinal rule that ' a party to suit first have to plead only they can lead the evidence for those pleaded facts.' Unless the proposed amendment is allowed Defendant No. 5 & 6 will not be able to lead evidence for the same. Indeed as rightly pointed by the plaintiff there has been delay Defendant No.5 & 6 & they have also been reluctant in adducing evidence when clear direction given. The merits of amendment are not discuss at this stage they are part of trial. At this point I see no change in the nature of the suit, if the proposed amendment is allowed. The plaintiff will get an opportunity the amend their written statements for the counter claim, if needed. For the delay caused costs can be imposed to compensate for loss of time. With this reasoning. I pass following order: -

ORDER

1. Application at exh. 169 is allowed subject to cost of Rs. 2,000/- be paid to plaintiff.
2. Defendant No.5 & 6 to carry out the amendment and provide amended copy of counter claim on or before next date.
3. The plaintiff is at liberty to carry out consequential amend in their written statement to the extent of amendment allowed by this order.

Bhor
Date. 04.04.2025.


(N.K.Nagargoje)
Civil Judge J.D., Bhor