

**ORDER BELOW EXH.157 IN REGULAR CIVIL SUIT NO.13/2005**

1. Perused application and say filed by other side i.e. defendant nos.1 to 3 & 5 as well as defendant no.7. Heard respective advocates for the parties. I have also gone through the record & proceeding.

2. By filing this application the plaintiffs prayed for amendment in the plaint by way of deleting the name of defendant no.7 as well as to delete some portion of the plaint in respect of the said defendant contending that, this suit is filed by the plaintiffs simpliciter for injunction against defendant nos.1 to 5 on the allegation that they obstructed the peaceful possession of the plaintiffs over the suit property, which is their tenanted property and initially defendant no.7 was made party to this suit, as such defendant no.7 is a public trust and owner of the suit property. But, no relief is claimed against the said defendant and he has made a formal party to the suit. So, the plaintiffs prayed for allowing this application for carrying out the necessary amendment by deleting the name of defendant no.7. This application is opposed by defendant nos.1 to 3 & 5 by filing say on this application contending that, initially defendant no.7 has filed written statement in this case and if the name of defendant no.7 is going to delete, it is necessary to strike out its written statement by passing necessary order on Exh.21. Defendant no.7 also strongly objected this application by filing say at Exh.171 contending that, defendant no.7 is a registered public trust and the suit property is owned by the said public trust. So, in this case, a public trust is a necessary party. Therefore, the permission as sought by the plaintiffs for deleting the name of defendant no.7 cannot be granted. Accordingly, they prayed for rejection of this application.

3. Considering the rival submissions and contentions of both sides, the following points arise for my determination, on which I have recorded my findings, with reasons, thereon as under.

## **POINTS**

## **FINDINGS**

- |   |  |                        |
|---|--|------------------------|
| 1 | Whether by proposed amendment the nature of suit will going to be changed? | :- No.                 |
| 2 | Whether the application is liable to be allowed ?                          | :- Yes.                |
| 3 | What order?  | :- As per final order. |

## **REASONS**

### **4. As to point nos.1 to 3:-**

The learned advocate for plaintiffs submitted that, this suit is filed by the plaintiffs simpliciter for injunction against defendant nos.1 to 5 and initially defendant no.7 was made as a formal party, as such the suit property is owned by the said public trust. But, as no relief is asked against the said public trust and to decide the suit earlier, it is necessary to delete the name of defendant no.7. He further submitted that by this proposed amendment the nature of the suit will not change and the amendment is formal in nature. So, he prayed for allowing this application. On the contrary, the learned advocate for defendants opposed this argument by submitting that, defendant no.7 is a necessary party to decide the controversy between the parties and therefore, the permission sought by the plaintiffs cannot be allowed.

5. Considering the rival submissions, I have gone through the pleadings of both parties. It is admitted fact that the plaintiffs have filed the present suit initially for declaration as well as injunction and in that circumstances they had made defendant no.7 as a party to the present suit, as such the suit property is owned by the said public trust. But, thereafter by way of amendment the plaintiffs had relinquished the prayer of declaration and kept the present suit only for simpliciter injunction alleging that, defendant nos.1 to 5 caused obstruction to their peaceful possession over the suit property. Further, the plaintiffs have not asked any relief against defendant no.7, to whom they wants to delete from the suit. So, considering the nature of suit and the relief claimed, I do not found that defendant no.7 is necessary party, as such in the suit for simpliciter injunction the necessary parties are the person who claiming the injunction

and the person against whom he claiming the injunction i.e. obstructionist. So, considering this aspect, I do not found much force in the argument of the defendants that, defendant no.7 i.e. a public trust is a necessary party for deciding the issue involved in this suit in respect of simpliciter injunction.

6. Further, by this amendment the plaintiffs do not want to introduce the new facts, but he wants to delete the name of defendant no.7 from the title clause and also delete some portion in the plaint in respect of said defendant no.7. So, considering this aspect, I found that this amendment is formal in nature, which does not change the nature of the suit. Further, in every suits the plaintiff is a master of the suit and he has authority to whom he wants to delete or add as a defendant. So, on that count also this application is liable to be allowed.

13. Thus, considering all above aspects and discussion in foregoing paragraphs, I come to the conclusion that the application is liable to be allowed. But, while doing so, as such this application is filed belated, I am saddling some cost on plaintiffs. Before parting the order, here I would like to mention that the present suit is filed in the year 2005 i.e. it is more than 10 years old and in view of directions of Hon'ble High Court and Hon'ble District Court, it is necessary to decide such type of petty old matters by keeping it day to day, without giving long adjournment. So, it is necessary to expedite the present matter. Accordingly, I answer point nos.1 & 2 and to answer point no.3, I proceed to pass the following order.

### **ORDER**

- 1) The application is allowed subject to costs of Rs.1000/- (Rs. One Thousand only) credited to State.
- 2) Costs of this application is on plaintiffs.
- 3) Hearing of suit is expedited.
- 4) Both parties & their respective advocates are directed to co-operate the Court to decide this matter expeditiously.

**Vengurla.**  
**Date:- 21/06/2016.**

**( D. S. Zanvar )**  
**Civil Judge J. D., Vengurla.**