



CNR No. MHSI070000492013
Order passed below Exh. No. 128
in R.C.S. No. 14/2013

This is an application preferred by the plaintiff under Order 6 Rule 17 of the Code of Civil Procedure.

2. The plaintiff has contended that the plaintiff has conducted survey of the suit land and suit house with the aid of private surveyor. At that time, it has come to the plaintiff knowledge that some unnecessary property and some facts are included in the suit claim. Therefore, the plaintiff has filed the present application and prayed to allow carry out proposed amendment in para no 1, 2, 3 and para no. 5 of the plaint. It is contended that hearing of the suit is yet to be began. Few of the defendants have not filed their written statement. If the present amendment is allowed, the defendants will get opportunity to file their written statement over said amendment. Therefore, no prejudice will be caused to the defendants. The nature of the suit is not also changed by the proposed amendment. Therefore, prayed to allow the application.

3. The defendant no. 1 to 3 have resisted the application by filing say below Exh.144. It is contended that, the defendant no. 1 to 3 have filed their written statement on 18/06/2013 and disclosed their defence. It is also contended that court commissioner was also appointed and filed his report on 20/04/2013. After lapse of six years from the date of filing written statement and court commissioner's report, the present application is filed. The plaintiff has filed the present application at belated stage. It is further contended that the proposed

amendment will change the nature of the suit and seriously prejudice the defendant's defence.

4. It is a case of the plaintiff that suit way is proceeding from defendant's land bearing S.No.24 Hissa No.3 from defendant no.5 land situated in S.No.35 Hissa No.9 and proceeded further at the land of plaintiff situated in S.No.25 Hissa No.22. On the basis of said pleading the plaintiff obtained temporary injunction and order of appointment of court commissioner. The plaintiff has also admitted the report filed by the court commissioner. Therefore, the plaintiff can not seek the proposed amendment. It is further averred that if the proposed amendment is allowed it will cause serious prejudice to the defendant's case. The plaintiff is trying to change nature of the suit by way of a proposed amendment. Therefore, prayed to reject the application.

5. Heard, both sides. The plaintiff as well as the learned advocate for the defendant no. 1 to 3 have reiterated the contentions raised in the application and say. The Hon'ble Apex Court **Denish Goyal @ Pappu Vs. Suman Agarwal (Bindal) and Ors.** arising out of **Special Leave Petition (Civil) 30324/2019 dated 24/09/2024.** After considering the numerous precedent in regard to the amendment of pleading culled out following principles.

(i) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent form the use of the word "shall", in the latter part of Order VI Rule 17 of the Code of Civil Procedure.

(ii) In the following scenario such applications should be ordinarily allowed if the amendment is for effective and proper adjudication of the controversy between the parties to avoid multiplicity of proceedings, provided it does not result in injustice to the other side.

(iii) Amendments, while generally should be allowed, the same should be disallowed if -

- (a) By the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side.
- (b) The amendment does not raise a time-barred claim, resulting in the divesting of the other side of a valuable accrued right (in certain situations)
- (c) The amendment completely changes the nature of the suit;
- (d) The prayer for amendment is malafide,
- (e) By the amendment, the other side should not lose a valid defence.

(iv) Some general principles to be kept in mind are -

- (I) The court should avoid a hyper-technical approach; ordinarily be liberal, especially when the opposite party can be compensated by costs.
- (II) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint or introduce an additional or a new approach.
- (III) The amendment should not change the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint.

5. In light of the aforesaid direction given by the Hon'ble Apex court, I have examined pleading of the parties. The plaintiff has come with the case that the suit way is proceeding

from S.No.24 Hissa no. 3 to the land of the defendant no. 5 situated in S.No.35 Hissa no. 9. The plaintiff has averred that the plaintiff is not having any other alternative way to access his land and house. Accordingly, the plaintiff prayed to grant declaration that the plaintiff is having prescriptive easement and alternatively easement of necessity over the said suit way. On the basis of said pleading, temporary injunction was also granted in favour of the plaintiff and the defendant no. 1 to 3 are restrained by temporary injunction.

6. In the proposed amendment the plaintiff is trying to remove land of the defendant no. 5 situated in S.No.35 Hissa no. 9. The plaintiff has completely changing his earlier pleading in respect of suit way in the proposed amendment. The Hon'ble Apex court as hereinabove observed that all amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. The proposed amendment will cause prejudice to the defendants. Therefore, I am of the considered view that if the proposed amendment is allowed, it will change the nature of the suit. Therefore, the present application is liable to be rejected. Accordingly, I pass following order.

ORDER

1. The application at **Exh.128** stands rejected.

(Pronounced and dictated in open Court.)

Place : Malvan
Date : 10/01/2025

Mahesh R. Devkate
Civil Judge Jr.Dn., Malvan.