

**ORDER BELOW EXH. 78 (I.A.No. 3/2022) IN REGULAR
CIVIL SUIT NO. 51/2013**

This is a suit for declaration, possession and injunction. The present application is filed by the Ld. Advocate for defendant under Order VI Rule 17 of CPC for amendment in written statement.

02. Perused application and say. Heard both sides.

03. It is submitted by defendant that the present suit has been filed for declaration of ownership as well as declaration of sale-deed as unenforceable. The plaintiff has also sought possession of the suit property. The defendant has categorically denied the case of the plaintiff but the fact is that the plaintiff had already instituted one another suit bearing R.C.S. no. 10/2000 for perpetual injunction against present defendants. In the said suit contention regarding disputed sale-deed in the present suit were also raised in the previous suit. In the said circumstance, it was necessary for the plaintiff to seek relief sought in the present suit in the previous suit filed by him. Thus, it is alleged that the present suit is barred by the principle of res-judicata and defendant has prayed for amendment of Written statement by way of addition of para no. 21.

04. The plaintiff through his advocate has strongly objected the application and submitted that application is false and illegal. The defendant had earlier filed an application for amendment of written statement which is rejected by the Court.

The present application is deliberately filed at belated stage. The period of 10 year have elapsed from the date of the filing of the suit and since long the matter is pending for trial. The plaintiff has already filed his affidavit of evidence but the defendant has taken many number of adjournment. Considering these facts, it is submitted that application is filed to delay the trial. The defendants ought to have raised proposed contentions in the earlier application filed by him for the amendment of written statement. The application is not bonafied. The proposed amendment sought is not legal. The present suit has instituted as per the direction of the Hon'ble Bombay High Court given in Appeal proceeding, therefore, defendant cannot raise such contentions in the present suit. With these all contentions, the plaintiff has prayed for rejection of the application.

05. It is pertinent to note that the trial of the matter is commenced. The plaintiffs advocate strongly argued that the application is barred by the proviso clause of Order VI Rule 17 of the CPC. The Ld. Advocate for defendant has relied upon the judgment of the Hon'ble Apex Court delivered in Chakreshwari Construction Pvt. Ltd. Vs. Manohar Lal reported in 2017 Lawsuit (SC) 123. The defendant's advocate particularly relied upon para no. 17 of the judgment in which the Hon'ble Supreme Court has observed that the parties are permitted to amend their pleading at any stage not only during the pendency of the trial but also at the first and second appellate stage with the leave of the Court provided the amendment proposed is bonafied, relevant and necessary for deciding the rights of the parties involved in the lis.

06. The proviso clause of Order VI Rule 17 of CPC bar amendment in pleading after commencement of trial unless the Court comes to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of trial. However, if the above observation of the Hon'ble Apex Court is considered, it appears that in appropriate cases amendment in the pleading need to be permitted if it is bonafide, relevant and necessary for deciding the rights of the parties involved in the lis. In the said circumstances, it would be proper to see, whether the proposed amendment sought in the written statement is necessary for deciding the rights of the parties on merits.

07. The plaintiffs advocate has also raised contention that the earlier application for amendment filed by the defendants came to be rejected. I have gone through the said application and order passed on it by my Ld Predecessor. It is clear from the order passed on the previous amendment application filed by defendant that it was rejected on the ground that the parties cannot be permitted to withdraw admission given on record. The present application for amendment filed by defendants is not regarding the same content, therefore, it cannot be said that this application is not tenable, because earlier application was rejected.

08. It is further submitted that, the present suit has been filed as per the direction issued by the Hon'ble High Court in the Appeal proceeding. No order of Appellate Court is produced before this Court. Even if it is accepted that the present suit has

been instituted as per direction of the Hon'ble Appellate Court, but it cannot be said thereby that the defendants are prohibited from raising particular defence for denying claim of the plaintiff.

09. The proposed amendment sought by defendants in written statement is not foreign to the subject matter of the suit. The proposed amendment as alleged is with respect to the previous litigation between the same parties and same property. Defendant wants to raise plea of res- judicata by way of proposed amendment. It appears that the proposed amendment is bonafide, relevant and necessary for final adjudication of the matter on merit. It is just and proper to say that defendants ought to have raised said plea at the earliest but same is not done. For the same, it would be just and proper to impose Costs of Rs. 1000/- on defendant. Hence, the application deserves to be allowed subject to Costs. Hence, following order is passed.

:- ORDER :-

1. Application is allowed subject to Cost of Rs. 1000/- payable to the plaintiff.
2. Defendant is permitted to carry out amendment in the written statement by way of addition of para no. 21 as prayed.
3. Defendant is directed to file amended copy of the plaint within 14 days from the date of this order or on any other subsequent date with the permission of the Court.

4. Defendant and his advocate to comply accordingly.

Date- 16/08/2023.

Malvan.

Amardeep D. Tidke

Civil Judge (J.D.) Malvan.