



REGULAR CIVIL SUIT NO. 38 of 2021

ORDER BELOW EXH. NO. 26

This is an application filed on behalf of Defendant No. 3 under order VI Rule 17 of The Code of Civil Procedure, 1908 (hereinafter referred as 'CPC' in short) for amendment in written statement.

02. It is contended that, the alleged sale deed in the suit have been executed on 12.02.2015. However the present suit have been filed on 19.11.2021. It is contended that, considering the nature of the suit and prayer made therein, the necessary pleading averring that, the suit is barred by law of limitation has to be added in the written statement at the end of Paragraph No. 8. The said averment was left to be made in the written statement inadvertently. Hence, it is prayed that, the application be allowed as prayed.

03. The LD. Advocate for Plaintiff filed the common say at **EXH 28** for applications on EXH 26 and 27 and objected the application. It is contended that, on 19.07.2022 the issues were framed, on 14.03.2023 plaintiff has filed his affidavit of evidence and accordingly the matter is part heard. Considering the provision of Order VI Rule 17 of CPC, the amendment as prayed cannot be granted as the defendant have not shown that inspite of due diligence, the party could not raised the averment before commencement of trial. Hence, it is prayed that, the present application be rejected with costs.

03. Perused the application and say. Heard LD. Advocate for Defendant No. 3 and LD. Advocate for Plaintiff.

04. It can be seen that, the Defendant No. 3 have filed his written statement at EXH 14 on 11.04.2022 and the issues were framed on 12.07.2022. Record shows that, Plaintiff have filed the affidavit of his evidence on 14.03.2023 wherein further examination in chief was completed on 20.06.2023. The record clearly shows that, though the Defendant had time to seek amendment as prayed in the application from 11/04/2022 till 20/06/2023 i.e. of more than a years span, the Defendant failed to seek any such amendment. Furthermore, on perusal of the application, the reason for seeking the present amendment is mentioned that, inadvertently the said averment could not be made in the original pleading of the written statement. The same does not disclose any fact showing that, inspite of due diligence, Defendant could not have raised the said averment in the written statement. There is absolutely no ground shown by the Defendant to allow the present application as record clearly shows that the Defendant had ample opportunity to seek the said amendment prior to beginning of trial. Considering the same the present application is liable to be rejected with costs. Accordingly, I proceed to pass the following :-

-:: ORDER ::-

1. Application is rejected with cost.

Place : Dodamarg.
Date : 11/10/2023.

(Y. P. Bavkar)
Civil Judge (Junior Division),
Dodamarg.