

R.C.S. No.192/2013

Anuradha @ Anusaya Malwade

V/s.

Girish Malwade and Ors.

Order Below Exh.94

This is an application made by the plaintiff under order VI Rule 17 of the Code of Civil Procedure. It is contended that the suit is instituted for partition and declaration. In plaint para No.7, the plaintiff pleaded that the documents and mutation entry No. 1502 in respect of suit Gat No.138, are not binding on her. However, prayer to that effect i.e. cancellation of gift deed Dt.05-11-2003 and mutation entry No.1502, remained to sought inadvertently. Now, the plaintiff wants to add said relief in prayer clause of the plaint. The nature of proposed amendment is formal in nature. On these grounds, the plaintiff solicited permission to make necessary amendment in her pleadings.

02. Defendants No.1 and 2/A filed their say at Exh.98 and resisted contentions of the plaintiff. They specifically averred that the suit is instituted for partition, declaration and injunction. The ancestor Onkar Malwade died on 21-09-1995. The plaintiff executed gift deed in favour of the defendant on 05-11-2003. Through present suit, the plaintiff sought declaration that said gift deed No.2979/2003 is not binding on her rights. Accordingly, the defendants filed their detailed written statement on 08-07-2013 wherein, it is pleaded that in view of mutation entry No. 1502, name of the defendant is entered to suit Gat No. 138. The written statement is filed prior to 10 years and 2 months. Thereafter, the plaintiff made present application for amendment in pleadings. Hence, the application is not within the period of limitation and it is

barred by provisions of the Limitation Act. The amendment as sought by the plaintiff cannot be permitted as per law. If proposed amendment is allowed, nature of suit will be changed. Ultimately, these defendants prayed for rejection of application with costs.

03. From the contentions as above, following points arise for my consideration. I have recorded my finding to each point for the reasons to follow:

Sr.No.	Points	Findings
1.	Whether proposed amendment is necessary for the purpose of determining the real question in controversy between the parties ?	Yes.
2.	What order?	As per final order.

REASONS

As to points No. 1 and 2 :

04. Heard both the learned advocates for respective parties. It is asserted by the plaintiff that she has pleaded in the plaint that gift deed and mutation entry No. 1502 not binding on her. However, relief of cancellation of said gift deed and mutation entry remained to be sought in prayer clause of the plaint. Hence, the plaintiff wants to add said relief in prayer clause of plaint. On the other hand, it is plea of these defendants that application is made belatedly and nature of suit will be changed if proposed amendment is allowed.

05. In context to proposed amendment, on perusal of plaint, it appears that in para No.7, the plaintiff has already asserted about alleged gift deed Dt.05-11-2003 and mutation entry No.1502. It is also pleaded that said gift deed and mutation entry are not binding on the plaintiff and therefore, mutation entry is liable to be canceled. Likewise, gift deed is void ab initio. In prayer

clause, the plaintiff sought declaration that gift deed Dt.05-11-2003 executed in favour of defendant No.1 is not binding on her. Thus, the plaintiff has already made enunciation about gift deed and mutation entry in the suit. Now, by way of proposed amendment the plaintiff seeks only addition of prayer in plaint regarding cancellation of gift deed and mutation entry. Thus, the plaintiff is not creating new case by way of proposed amendment but aspect of gift deed is already pleaded in her plaint.

06. After all it is for the plaintiff to prove her case. As per settled principle of law, while considering amendment application, merits of the case need not be looked into. In present suit, on considering pleadings in plaint, the proposed amendment does not appear inconsistent with previous case of the plaintiff.

07. Thus, looking to the contentions in application for amendment in the light of averment in the plaint, it is seen that the amendment sought is bonafide and will not change nature of the claim. Also no prejudice would be caused to the defendants if proposed amendment is allowed. Therefore, considering the nature of suit, it deems necessary to allow the plaintiff to amend her pleadings. This Court is satisfied that proposed amendment is necessary for the purpose of determining the real question in controversy between the parties and to avoid multiplicity of the proceedings. Hence, point No.1 is answered in the affirmative and to answer point No.2, I proceed to pass following order.

ORDER

1. Application is allowed subject to costs of Rs. 200/- payable to defendants No.1 and 2/A.

2. The plaintiff to carry out necessary amendment in the plaint as enumerated in present application within 14 days from this order.
3. The plaintiff to supply sufficient copies of the plaint after carrying out amendment as above.
4. The plaintiff to deposit necessary court fees on additional prayer to be added in plaint by virtue of this order.

Miraj
Date : 04.07.2024.

(V. V. Khulape)
Jt. Civil Judge Junior Division,
Miraj.