



RCS No.140/2023

Kamal + 1 V/s.

Bhauso + 2

ORDER PASSED BELOW APPLICATION (EXH. No. 20)

The plaintiffs have filed the application under Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short 'the Code') praying for certain amendments in the plaint.

02. The plaintiffs contend that during pendency of the suit, the defendants laid down pipeline in the suit property without permission of the plaintiffs. Therefore, they want to amend the suit praying for mandatory injunction, thereby, ordering the defendants to remove the pipeline. They also want to pray for compensation of Rs. 1,00,000/- from the defendants for the above mentioned wrong.

03. The defendants have filed their say at Exh. No. 19. They have opposed the application. They contend that the application is false. The plaintiffs realized about their false claim after considering written statement of the defendant, therefore, the plaintiffs have filed the application. On allowing the application, the defendants would suffer loss. The cause of action mentioned by the plaintiffs is false. Earlier cause of action and cause of action mentioned in the application at hand, are different. It would change nature of the suit. The plaintiffs should have filed fresh suit. The plaintiffs are trying to mislead the court. They have denied claim of the plaintiffs. Therefore, the plaintiffs are not entitled to pray for mandatory injunction. Therefore, they have prayed to reject the application.

04. I perused the application, plaint, written statement of the defendants and heard argument of the learned advocate for the plaintiffs. The defendants and their advocates are absent. Therefore, there is no argument from the defendants.

05. As per the plaint, the case of the plaintiffs is that they are owner and possessor of immovable property (for short “the suit property”). The defendants are obstructing to the possession of the plaintiffs. The defendants had threatened them to lay down pipeline in the suit property. Therefore, the plaintiffs have prayed for perpetual injunction restraining the defendants from encroaching upon the suit property and lay down pipeline in the suit property.

06. Now the plaintiffs contend that on 20.05.2023, the defendants have laid down pipeline in the suit property. Therefore, the plaintiffs want to pray for mandatory injunction ordering the defendants to remove the pipeline. The record shows that the plaint is presented on 16.05.2023. Thus, the alleged incident did occur after presentation of the plaint. It is worth here to note that the defendants in their written statement (Exh. No. 18) have already claimed that they have already finished the work of laying down pipeline.

07. I find that it is a matter of evidence as to when did the defendants lay down pipeline in the suit property, on 20.05.2023 or prior to presentation of plaint or as claimed by the defendants. The proposed amendment do not change nature of the suit. It is because, the alleged incident of laying down pipeline in the suit property is as per the alleged threat claimed by the plaintiff in the plaint. Therefore, the relief of removal of that pipeline by mandatory injunction is a necessity to settle the dispute at once between the parties.

08. The plaintiffs also want to claim for compensation towards the alleged laying down of pipeline in the suit property. It is incidental relief. Therefore, it also does not change nature of the suit at hand. Therefore, I find that the application requires to be allowed. It is worth here to note that the alleged incident of laying down of the pipeline through the suit property is of 20.05.2023 and the plaintiffs have filed the application on 25.07.2023. There is no long delay. Therefore, I pass the following order.

ORDER

1. The application is allowed.
2. The plaintiffs to carry out the amendment as prayed for, on or before next date and pay court fees for claim of compensation of Rs. 1,00,000/-, on or before next date.

Miraj
Date : 20.08.2024

(R. S. Wankhede)
Civil Judge Junior Division
Miraj

CERTIFICATE

I affirm that the contents of this P.D.F. file judgment/order are same, word to word, as per the original judgment/order.

Name of the Stenographer. : K. A. Udagave (Steno. - III)
Court. : Civil Judge Junior Division
and J.M.F.C. Miraj

Dictation Date : 20.08.2024
Order signed by
the Presiding Officer on. : 20.08.2024
Order uploaded on. : 22.08.2024