

**R.C.S. No.340/2013**

Bhalchandra G. Sathye

V/s.

Nutan A. Kadam

Order Below Exh.137

This is an application made by the plaintiff under Order VI Rule 17 and Order I Rule 10 of the Code of Civil Procedure. It is contended that the suit is instituted for perpetual injunction. When the defendant started illegal construction, present suit is instituted. The Gram Panchayat, Tanang and Gramsevak given illegal permission of construction to the defendant. The said fact came to know by the plaintiff when the defendant filed her written statement in the present suit. Therefore, the plaintiff had instituted separate suit bearing R.C.S.No. 329/2014 against the Gram Panchayat. In said suit, defendants No.1 and 2 made application under Order VII Rule 11 of the Code of Civil Procedure and the Court allowed said application on 28-03-2016 thereby rejecting plaint with observations that the Gram-Panchayat can be made party in present suit i.e. R.C.S.No.340/2013 and necessary amendment can be sought to that effect. Aggrieved by said decision, present plaintiff preferred first appeal bearing R.C.A. No.182/2016. However, said appeal is also dismissed by the Appellate Court on 10-11-2022. On the said decision, the plaintiff filed Review Application No. 06/2022 before the Appellate Court. However, the said Review Application is also rejected on 06-10-2023 observing that Gram Panchayat can be made party in present suit and consequential amendment to that effect can be sought. Thus, in view of decisions and observations in R.C.S.No.329/2014, R.C.A. No.182/2016 and Review Application No. 06/2022, the plaintiff constrained to make present application for impleading Gramsevak and Sarpanch, Tanang as the

defendants in present suit and amendment in pleadings to that effect for just decision of suit. The plaintiff constrained to amend his pleadings on the basis of decisions of this Court and Appellate Court. As such, the proposed amendment is legal and nature of the suit and relief claimed therein will not be changed, if application is allowed. If proposed amendment is allowed, the defendant would not put to any loss. Rather, it will be helpful in dispensing proper justice. On these grounds, the plaintiff solicited permission to make necessary amendment in his pleadings.

02. The defendant filed her say at Exh.140 and resisted contentions of the plaintiff. She specifically averred that the plaintiff preferred an appeal bearing R.C.A.No.182/2016 against the decision of this Court in R.C.S.No.329/2014. However, said appeal is dismissed on 10-11-2022. Likewise, Review Application No. 06/2022 is also rejected on 06-10-2023 which was made by present plaintiff before the Appellate Court after dismissal of appeal. In such circumstances, making application for amendment is nothing but to review the decision of Appellate Court by the trial Court. In fact, this Court has no right to change findings of the Appellate Court. The plaintiff is trying to put forth review of the decision in R.C.S.No.329/2014 and no such provision is prescribed in the Code. Rather, decision and finding of the Appellate Court is final and cannot be changed. If proposed amendment in para No.5 is considered, entire nature of suit will be changed. The plaintiff is trying to reconstruct his suit. The evidence of plaintiff is closed and evidence of the defendant is started. Hence, at this stage, amendment cannot be allowed. By present application, the plaintiff sought to implead proposed defendants No.2 and 3 which amounts to

review the aspects in R.C.S.No.329/2014, R.C.A.No.182/2016 and Review Application No. 06/2022. Hence, the application for amendment cannot be allowed. The plaintiff is misusing the procedural law. Hence, heavy costs need to be imposed on him. Ultimately, the defendant urged to reject the application with costs of Rs.25,000/- and alternatively prayed for directions to the plaintiff for filing fresh suit by withdrawing present.

03. Heard both sides. 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. It is asserted by the plaintiff that the Gram Panchayat, Tanang and Gramsevak given illegal permission of construction to the defendant. Therefore, the plaintiff had instituted separate suit bearing R.C.S.No. 329/2014 against the Gram Panchayat. In said suit, the Court rejected the plaint under Order VII Rule 11 of the Code of Civil Procedure observing that the Gram Panchayat can be made party in present suit i.e. R.C.S.No.340/2013 and necessary amendment can be sought to that effect. Aggrieved by said decision, present plaintiff

preferred first appeal bearing R.C.A. No.182/2016 before the Hon'ble District Court. However, said appeal is also dismissed. Likewise, Review Application made by the plaintiff is also rejected observing that Gram Panchayat can be made party in present suit and consequential amendment can be sought to that effect. Thus, in view of decisions and observations of this Court and the Appellate Court, the plaintiff constrained to make present application for impleading Sarpanch and Gramsevak, Tanang as the defendants in present suit and amendment in pleadings to that effect for just decision of suit. On the other hand, the defendant resisted the application and averred that proposed amendment would change nature of suit. Also the amendment cannot be allowed as trial of the suit is already commenced. In support of his arguments, the learned advocate for the defendant relied on following citations:

- a) **Ganpat Baburao Boraste vs. Vinayak Pandurang Waghmare, 2022(6) All MR 721.**
- b) **Sandeep Vijayrao Ingle vs. Aniruddha Chaitram Ramteke, 2022(5) ALL MR 641.**
- c) **Asian Hotels (North) Ltd. vs Alok Kumar Lodha, in Civil Appeal Nos. 3703-3750 of 2022, Dt.12th July, 2022.**

05. Considering ratios in aforesaid judgments and in context to proposed amendment, on perusal of plaint it transpires that the present suit is instituted for relief of perpetual and mandatory injunctions. It is alleged in the plaint that the defendant started his construction just adjacent to property of the plaintiff without measurement and prior permission of Gram Panchayat. Further, as contended by the plaintiff, the Gram Panchayat given illegal permission of construction to the defendant. Therefore, the plaintiff

had instituted separate suit bearing R.C.S.No. 329/2014 against the Gram Panchayat. In this regard on perusal of copy of Exh.1 in R.C.S.329/2014 (filed along with Exh.97), it appears that the plaintiff had instituted said suit against the Gramsevak, Sarpanch Tanag and present defendant for declaration and perpetual injunction. However, my learned predecessor rejected the plaint in said suit under Order VII Rule 11 of the Code by order Dt. 28-03-2016. While passing said order, my learned predecessor observed that the present plaintiff instituted another suit bearing R.C.S.No.340/2013 against defendant No.3 for injunction in respect of the same property and the plaintiff has right to amend that suit appropriately and seek declaration. It is also observed that the plaintiff may incorporate appropriate relief by seeking amendment in the pending suit R.C.S.No.340/2013. It further appears that aggrieved by said decision, present plaintiff preferred first appeal bearing R.C.A.No.182/2016. However, said appeal is also dismissed on 10-11-2022 with observations that *"The plaintiff stating that he is praying declaration against defendant Nos. 1 and 2 Gramsevak and Sarpanch for granting the permission of construction to defendant No.3 of his plot. The said fact may amend the plaintiff in previous suit and seeking the relief as he wish. For that reason, the subsequent suit is not required to file."* Thus, the Hon'ble Appellate Court while dismissing appeal also observed that the present plaintiff may amend his previous suit and seek relief as he wishes. Thereafter, present plaintiff made Review Application No. 06/2022 before the Hon'ble Appellate Court. However, said Review Application also came to be rejected on 06-10-2023 with findings that the original plaintiff filed two suits for the same relief.

06. Thus, from above discussion it is cleared that the plaintiff had instituted suit R.C.S.No.329/2014 against the Gramsevak and Sarpanch, Tanang. However, my learned predecessor rejected plaint in the said suit observing that the present plaintiff has right to amend the suit appropriately and seek declaration in pending suit R.C.S.No.340/2013. The said decision also upheld by the Hon'ble District and Additional Sessions Judge-2, Sangli in R.C.A.No.182/2016 with similar observations to that of the trial Court. Thus, the plaintiff has left only remedy to amend his pleadings in present suit in view of aforesaid observations made by both the Courts. In such circumstances, it cannot be said that the plaintiff is creating new case or changing nature of suit by way of proposed amendment. After all it is for the plaintiff to prove his 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. Though trial of suit is commenced, it can be said that in spite of due diligence, the plaintiff could not have raised the matter before the commencement of trial due to pendency of appeal and review application before the Appellate Court. Hence, the ratios in the judgment of a) Ganpat, b) Sandeep and c) Asian Hotels (**supra**) on which the defendant placed her reliance, are not applicable to the case in hand, being based on different facts and circumstances.

08. 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 defendant if proposed amendment is allowed as she has an opportunity to file additional written statement on amendment. Considering the nature of suit, it deems necessary to allow the plaintiff to amend his 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. 500/- to be deposited in the Legal Aid Account.
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 deposit necessary court fees on additional relief and supply sufficient copies of the plaint after carrying out amendment as above.

Miraj
Date : 09/05/2024.

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

C E R T I F I C A T E

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

Name of the Stenographer. : K. A. Udagave (Steno - III)

Court. : Civil Judge Junior Division and
J.M.F.C. Miraj

Dictation Date : 09.05.2024

Order signed by :
the Presiding Officer on. 09.05.2024

Order uploaded on. : 10.05.2024