

MHSN090005252015



Order below Exh.49 in R.C.S.No.103/2015

[Dadasaheb Shamrao Patil & Anr. v/s. Ashok Ganpatil Jamdade & Ors.]

The present application is filed by defendant no.1 under Order VI Rule 17 of Code of Civil Procedure.

2. By filing present application it is submitted by the defendant that, he has filed their written-statement at Exh.28. The defendant no.1 is illiterate and just now, he found some old papers which shows that he is adopted son of Dadu Yesu Jamdade. Therefore, regarding the same, he wants to add para no.8A in is written-statement. Therefore, the defendant no.1 may be permitted to amend his written-statement.

3. The Ld. Advocate for the plaintiffs filed his say at Exh.56 and denied the contents of the application. It is submitted that the suit is filed in the year 2015 and matter is above five years old. The matter is fixed for hearing and plaintiff has filed his affidavit of examination in chief and thereafter, the defendant no.1 has filed present application. As the matter fixed for hearing the defendant cannot file such type of application. The proposed amendment is going to change the nature of suit. The defendant no.1 has not shown due diligence in filing the present application. Therefore, application may be rejected. In the alternatively, it is prayed that, if Court comes to the conclusion to allow the present

application, then the present application may be allowed with compensatory costs of Rs.25,000/-.

4. Heard both sides. The Ld.Advocate for the defendant no.1 relied on following case laws.

1. *Life Insurance Corporation of India V/s. Sanjeev Builders Pvt. Ltd., & anr. Reported in 2022(6)ABR, 67.*
2. *Bhimrao Laxman Kambale V/s. Annasaheb Dhondiram Manole & anr. reported in 2018(3)ALL M.R.740.*
3. *Sajjankumar V/s. Ramkishan, reported in 2005 C.J. (SC)1161.*
4. *Bharat Petroleum Corporation V/s. Precious Finance Investment Pvt. Reported in 2006(6) Bom. C.R. 510.*

On the other hand, Ld.Advocate for plaintiffs relied on following case laws.

1. *Ushadevi V/s. Rijwan Ahmad & Ors., reported in 2008(1) BCJ 11 (SC).*
2. *Ajendraprasadji N.Pande & Anr. V/s. Swami Keshav Prakeshdasji & Ors., reported in AIR 2007 SC 806.*
3. *M. Revanna V/s. Anjanamma & Ors., reported in 2020(1) Mh.L.J. 143.*
4. *Vera Lelisa Viegas Pereira V/s. Agnelo Caetano Colaco & Ors., reported in 2014(1) Mh.L.J. 170.*
5. *Vidyabai & Ors. V/s. Padmalata & Anr., reported in 2009(1) All M.R. 471.*
6. *Gangubai Baban Kadam & Anr. V/s. Dr.Vidya Vijay Joshi, reported in 2015(5) All M.R. 238.*

7. *Chandaer Kanta Bansal V/s. Rajindar Singh Anand, reported in 2008(4) All M.R.423.*

5. After hearing both the sides, I have gone through the record and case laws filed by both the sides. After perusal of record it is seen that it is the contention of defendant no.1 that he got the old documents which shows that he is adopted son of Dadu Yesu Jamdade and now, regarding the same he wants to amend his written-statement by adding para no.8A. The Ld.Advocate for plaintiffs denied this application stating that the defendant no.1 has not shown the due diligence and trial has been already commenced. He further further took objection stating that the defendant no.1 is introducing totally different, new and inconsistency case. The record shows that the present suit is filed by plaintiff for partition and separate possession wherein the defendant no.1 has filed his written-statement at Exh.28. Issues have been framed and plaintiff no.1 filed his affidavit of examination in chief. As it is the contention of defendant no.1 that he has just found documents regarding his adoption, therefore, the question as to due diligence does not arise. Further, the nature of proceeding will not be change as the defendant has not raised any counterclaim in his written-statement. Further, regarding the proposed amendment the plaintiff has to prove his contention by adducing evidence regarding the same. Also, the plaintiffs will get an opportunity to cross examine the defendant no.1 and his witnesses. Therefore, considering the contents of application, I proceed to pass the following order.

ORDER

1. Application is allowed.
2. Defendant no.1 to carry out necessary amendment in his written-statement and to furnish the copy of amended written-statement on next date.
3. No order as to costs.

TASGAON.

Date : 20.04.2023

**(Omprakash M.Mali)
Civil Judge Jr.Dn.,
TASGAON.**

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	:	U.P.Patil
Court	:	Civil Judge Jr.Dn. and Judicial Magistrate F.C., Tasgaon.
Date	:	20.04.2023
Order signed by the Presiding officer on	:	20.04.2023
Order uploaded on	:	20.04.2023