

Regular Civil Suit No. 352/2012.
ORDER (Below Exh.48)

(1). Read application and say of defendant. Perused pleadings of the parties. Heard advocates for the parties.

(2). This application is filed by the plaintiff under Order 6, Rule 17 of the Civil Procedure Code for permission to amend the plaint as sought in this application.

(3). According to plaintiff, he filed suit for permanent injunction to restrain defendants from causing obstruction to plaintiff's possession over the suit property and from demolishing the suit property. From the written statement filed by defendants, he firstly came to know that there is sale deed dated 23-04-1996 and deed of correction dated 10-08-1998 in respect of suit property. The plaintiff and his brother Prakash have not executed such deeds at any time. The so called deeds were concealed by the defendants as there was no mutation entry on the basis of said sale deed to the 7/12 record of land block no. 4075. The so called sale deed and deed of correction are bogus and illegal. Hence, the application to amend the plaint and to plead that -

- (i) when plaintiff got knowledge of the sale deed and correction deed,
- (ii) how said deeds are bogus and illegal,
- (iii) to plead that said deeds are not possible as the plaintiff was in the service of defence at the relevant dates of the deeds,
- (iv) when cause of action arose to amend the plaint and

(v) to sought declaration to the effect that said deeds be declared as bogus and illegal. Hence, the application.

(4). This application is resisted by defendants by filing their say at Exh. 50. According to them, there is no cause of action to application. Suit is fixed for hearing. Application is filed at belated stage and once the trail is commenced, application for amendment is not maintainable. Proposed amendment will change the entire nature of the suit, therefore, they prayed to reject the application and alternatively contended that if Court comes to the conclusion that application deserves to be allowed, then heavy costs be awarded against the plaintiff.

(5). I have carefully gone with the pleadings of the parties. The portion admeasuring 5500 Sq. Ft. bearing property no. 3980 out of the land block no. 4075 situated at village Manerajuri, Tal. Tasgaon which is specifically described in plaint para no. 1-A is the subject matter of the suit. Suit is filed for permanent injunction to restrain the defendants from causing plaintiff's possession over the suit property. According to defendants, they have purchased 5 Ana 4 Pai share i.e. 11 R portion out of the land block no. 4075 having area of 0 H 33 R situated in village Manerajuri from plaintiff and his brother Prakash on 23-04-1996. This property is subject matter of the counter claim and defendants have claimed for issuing perpetual injunction against the plaintiff. In his written statement filed by the plaintiff to counter claim he specifically denied the execution of alleged sale deed and deed of correction by him and his brother Prakash.

(6). Whether defendants have purchased portion out of land block no. 4075 from plaintiff and his brother Prakash, whether they are in possession of it or whether plaintiff is in possession of the suit property, all these questions can be decided on merits. However, by proposed amendment plaintiff intends to challenge the said deeds contending that it is bogus and false one. Though suit and counter claimed filed for permanent injunction against each other by the parties on the basis of possession, the issue about their ownership and possession is involved in the matter. In this context, proposed amendment will not change the entire nature of the suit and it is just convert the suit for simplicitor injunction into suit for declaration and simplicitor injunction. Further, proposed amendment is necessary to avoid multiplicity of the proceeding between the parties and it is necessary to determine the real controversy between the parties. In these circumstances, it is not just to dis-allow the application merely on the ground that trial is commenced. The inconvenience of defendants can be compensated by way of imposing costs on plaintiff. The plaintiff contended that he got knowledge of sale deed and deed of correction when defendants filed their written statement, therefore, it is just and proper to give effect to amendment from the date of its incorporating in plaint otherwise it will cause prejudice to the interest of defendants. Hence, the following order.

ORDER

1. Application is allowed subject to costs of Rs.500/- payable by plaintiff to defendants.

2. Plaintiff is permitted to amend the plaint as sought in the present application within statutory period.
3. Plaintiff is directed to file amended copy of plaint.
4. It is made clear that amended plaint will take effect from the date of amendment in plaint.

TASGAON.

Date :31st August 2016

Sd/-xxx
(A.A. Chendke)
CIVIL JUDGE, JUNIOR DIVISION
TASGAON.