

REGULAR CIVIL SUIT NO.155/2013
[Order Passed Below Exh.44]
[Shankar Pandu Jadhav v/s. Vasant Pandurang Mohite]

Perused the application and say. Heard learned Advocate of plaintiff. The learned Advocate of plaintiff submitted that the defendant is seeking amendment in the plaint. As per the contention of the defendant, proposed amendment is in respect of acts occurred after filing of the written statement. Therefore, if the proposed amendment is allowed, it will go to the date of filing of the suit. Therefore, on that ground, the defendant is not entitled to seek the amendment by invoking provisions of Order VI, rule 17 of the Code of Civil Procedure. He further fairly submitted that they are at liberty to file their conditional written statement and prayed to reject the application.

2] It is material to note that the suit is for declaration and perpetual injunction. The issues in the present matter are yet to be framed. Therefore, the stage of the matter is pre-commencement of the trial. In such circumstances, there is no bar of proviso to Order VI, rule 17 of the Code of Civil Procedure. Therefore, while deciding applications before commencement of the trial, liberal view is necessary. Moreover, now the defendant is seeking to add some additional circumstances in the written statement by inserting some additional paras. The defendant specifically contended that after filing of the suit, the appeal was filed by the defendant before the Superintendent of Land Records, Sangli and during the pendency of the present suit, Deputy Superintendent of Land Records visited the suit property in respect of falni amendment of survey No.225/3 wherein at the time of measurement, Deputy Superintendent of Land Records shown the specific boundaries of the property of the plaintiff. In order to bring said facts and record, amendment in the written statement is essential and accordingly, defendant prayed to amend the plaint.

3] Therefore, considering the contentions of the defendant, the

defendant is seeking the amendment in respect of the facts occurred after filing of the suit as well as after filing of the written statement. Therefore, considering the stage and to decide the real controversy between the parties, in my considered view, proposed amendment is beneficial.

4] At this juncture, it is also worthwhile to mention that the objection of the plaintiff is that if the proposed amendment is allowed, then, amended plaint will go to the date of filing of written statement and, therefore, prayed to reject the application.

5] It is worthwhile to mention that there is no issue of any limitation. The pleading of proposed amendment is itself seen, then, it clearly discloses that it is the facts occurred after filing of the present suit. Therefore, I do not find that the submission of the learned Advocate of plaintiff is acceptable.

6] In the cumulative result of above discussion, as the stage is pre-commencement of the trial, liberal view is essential. Moreover, it is very settled law that while dealing with the application of amendment to written statement, more liberal view deserves to be expected. Hence, as discussed above, the proposed amendment is useful to decide the real controversy between the parties. Hence, application deserves to be allowed and I proceed to pass the following order.

: ORDER :

1. The amendment application Exh.44 is hereby allowed.
2. The defendant to carry out amendment within 14 days and produce amended copy of the written statement within the said period. Failure to comply the order leads to rejection of present application.

Kadegaon
Dt.07.08.2015

sd/-x
(K.M. Kayangude)
Jt. Civil Judge, Jr. Dn., Kadegaon