

Dharmendra Ghadage Vs.
Balasaheb Ghadage & ors.

ORDER BELOW EXH. 35

(Passed on 04.09.2024)

Plaintiff has filed present application to amend the plaint vide O. VI R. 17 of the Code of Civil Procedure, 1908.

2] It is the contention of the plaintiff that, present suit is filed by the plaintiff for declaration that sale deed dated 09.02.2023 executed in favour of defendant no. 1 is not binding upon his share and further to restrain the defendant no. 1 from causing any obstruction to his peaceful possession over the suit property with the help of the alleged above mentioned sale deed. But subsequently defendant no. 1 died, hence he brought on record defendant no. 1A to 1D as legal heir of the defendant no. 1. Further it alleged that, defendants are trying to take forcefully possession of the suit property from the plaintiff. But in the prayer clause due to inadvertence it remains to seek injunction against defendant no. 5. Therefore, he is seeking by way of amendment to add para 9(K)(1) after 9(K) that, defendant no. 5 should not obstruct the peaceful possession of the plaintiff over the suit property with help of sale deed bearing registration no. 1416/2024 registered on 16.04.2024.

3] The defendant no. 5 has filed his say and opposed the proposed amendment sought by the plaintiff. According to him, already Mamletdar Court decided the controversy between the parties, therefore plaintiff has no right to seek such amendment against the concurrent findings of the Mamletdar Court. Further, plaintiff has no right to brush aside the defence of the defendant, if the proposed amendment is allowed it will cause change in the nature of the suit, cause of action.

4] Points for determination along with the findings thereon are as follows.

Sr. No.	Points	Findings
1.	Whether the proposed amendment in the application is necessary for the purpose of determining the real question in controversy between the parties?	Yes.
2.	What Order?	Application is allowed.

REASONS

As To Point No. 1:

5] Heard Ld. Advocate for the both the parties. They have argued in consonance with their contention in the application and say. Further, defendant no. 5 also relied on following case laws:

- i. SH Dadaso Jagtap and another Vs. Smt. Satwant Kaur Sarna and others, 2024: DHC: 5193, in the said judgment Hon'ble Delhi High Court observed that, an amendment to the plaint should not change the entire nature and character of the subject matter of the suit, if an amendment seeks to introduce an entirely different cause of action, it should be considered as fresh suit and not allowed.*
- ii. Mahadevi Annasaheb Jagtap Vs. Shilabai Popat Lambe and others, (2021) 4 ALL.M.R. 687, in the said judgment Hon'ble Bombay High Court observed that, it is the duty of the party seeking amendment to show that in-spite of due*

diligence the proposed amendment could not be incorporated earlier.

iii. Ram Niranjan Kajaria and others Vs. Sheo Prakash Kajaria and others 2016(3) Mh.L.J. page no. 172.

6] *It is beneficial to go through the relevant provision of order VI rule 17 before starting the discussion, O. VI R. 17 of the CPC elevates that, “the court may at any stage of the proceeding allow either party to alter or amend his pleadings in such manner & on such terms as may be just & all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties”. From the above discussion it is crystal clear that, in view of O. VI Rule 17 of CPC, the proposed amendment as the defendant wants, is in the nature which is, necessary for the purpose of determining real questions in the controversy between the parties.*

7] Perused the record. It appears that, trial of the suit has not been commenced yet. It reveals that, the plaintiff has filed this suit for the declaration and consequential injunction in respect of the suit property.

8] On perusal of record, it reveals that, plaintiff is seeking amendment in the prayer clause and by way of said amendment wants to seek prayer of injunction against defendant no. 5. However, it is the claim of defendant no. 5 that, it will change the cause of action of the suit, as on the date of institution of the suit, there was no cause of action against defendant no. 5. Therefore, it will certainly change the nature of the suit. On this point, it is pertinent to note that, during pendency of the suit deceased defendant no. 1 had executed the alleged sale deed dated 16.04.2024 in favour of defendant no. 5,

thereafter defendant no. 5 was added in the present suit by way of amendment. Further it is pertinent to note that, after purchase of the suit property defendant no. 5 has entered in the shoes of defendant no. 1. Furthermore, on perusal of record, it reveals that, present suit is filed by the plaintiff for protection of his possession, therefore initially plaintiff was seeking protection of possession over the suit property against defendant no. 1, after his demise and transfer of the suit property to defendant no. 5 against him also. Therefore, from aforesaid discussion it clear that, as defendant no. 5 enters in the shoes of defendant no. 1, he has every right to seek protection of his possession against defendant no. 5. Therefore, it can't be said that, if proposed amendment is allowed, it will change the nature of the suit. I have also gone through the cited authorities, facts in the present case are different as to the facts in the cited authorities. In Mahadevi Jagtap's case alleged amendment was sought after commencement of the trial, but in the present case trial has yet to commence, therefore ratio laid down in Mahadevi's case is not favourable to the present defendant. Further, it is not shown by the defendant no. 5 that, what prejudice will be caused to him if the proposed amendment is allowed at this stage. Further, it is important to note that, trial has not yet commenced, yet issues are to be framed.

9] Considering the aforesaid discussion, it appears that, the plaintiff is trying to bring out the proposed amendment in the plaint, at the stage when the trial of this suit has not been commenced yet. Moreover, it appears that, by the way of amendment, the plaintiff is not definitely, introduces a totally different, new and inconsistent case and attempting to change the fundamental character of the suit. The proposed amendment will not change the nature of the suit and will cause him irreparable loss or any sort of prejudice to the defendant.

Furthermore, the effect of such proposed amendment is not likely to take away from the defendant a legal right accrued in his favour. Hence, it would not cause any prejudice to the defendant. Considering these reasons, it would be appropriate to say that, the amendment sought to be incorporated by plaintiff is necessary for the purpose of determining real question of controversy. Therefore, leave to amend should have to be granted. In the result, answer to this point is in the affirmative.

As To Point No. 2

10] From the above discussion, it becomes clear that, the application is entitled to be allowed. However, the delay caused to the defendant to proceed with the suit cannot be ignored. Hence, it would be suitable to impose costs of this application on plaintiff. Thus, the costs of Rs. 400/- would serve the purpose and therefore, imposed on plaintiff. Hence, in answer to this point, following is the order –

ORDER

1. The Application is allowed, subject to costs of Rs. 400/- to be paid by the plaintiff to the defendant no. 5.
2. Plaintiff is directed to carry out the proposed amendment till next date.
3. The defendant no. 5 is at liberty to file additional rejoinder if any.

Date : 04.09.2024.

(A. S. Sonwalkar)
5th Jt. Civil Judge, (Jr. Div.)
Pandharpur

CERTIFICATE

I affirm that, the contents of this PDF file Judgment/Order are same word to word, as per the original Judgment / Order.

Court : Jt. C. J. J. D. Pandharpur

Name of Stenographer : M. P Gheradi.

Date : 04.09.2024

Judgment/Order signed by
the Presiding Officer on : 04.09.2024

Judgment/Order uploaded on : 05.09.2024