

Spl.Civ.Suit No.89/2007.

Baliram More etc.

V/s.

Ratnabai More etc.

Order below Exh.140.

1 This is an application seeking amendment of the plaint under the provisions of O.6 R.17 of the Civil Procedure Code.

2 The plaintiffs' case lies in narrow compass that, initially the present suit is filed for declaration and perpetual injunction wherein the temporary injunction was rejected by the court on 7/4/2008. After rejection of the temporary injunction application, the defendants encroached on the suit property and obtained forcible possession. Now the plaintiffs are willing to claim relief of possession of the suit property. It is just a technical issue. The present relief is prescribed within period of limitation and to avoid multiplicity. The proposed amendment is just and necessary. If at all, the amendment is denied, then the plaintiffs have to suffer an irreparable loss.

3 The defendants have resisted the application by filing their say vide Exh.143. They have strongly submitted that, the evidence of both the parties have been closed. The plaintiffs have already sought two amendments, previously. They were well acquainted with the fact that, the defendants are having jural possession over the suit property. In fact in the plaint itself, the deceased plaintiff has mentioned that, the defendants are having their possession over the suit property on the basis of registered

sale-deed. The plaintiff and present plaintiffs are having no possession over the suit property. The plaintiffs and their witnesses have given candid admission in their depositions that, the defendants are having settled possession over the suit property. The plaintiffs have not shown due diligence in their application. Therefore, as per proviso of O.6 R.17 of Civil Procedure Code, the application itself is not maintainable. Hence, the defendants urged for dismissal of the application.

4 Heard both the sides. Perused application wherein the plaintiffs themselves mentioned that, on 7/4/2008, their temporary injunction application was rejected by the court. It is incumbent to see that, after rejection of the temporary injunction application, the plaintiffs have not made any attempt to amend the plaint. Present application is filed after lapse of five years. Even if the question of limitation is considered and the plaintiffs can claim possession of the suit property within twelve years, but that issue is considerably different. Here in this case, the plaintiffs ought to have shown specific reason for the delay in claiming the relief of possession. Eventually, both the parties have concluded their evidence and the matter is posted for arguments.

5 During the passage of time, the plaintiffs have already sought two amendments in the present suit vide Exh.53 and 70. But at that time also the plaintiffs have not availed present opportunity to get relief of possession which is one of the negative points for the plaintiffs' case.

6 As per the provisions contemplated under the proviso of O.6

R.17, it is significant to note that, the party may avail opportunity to amend the plaint. But the court should satisfy itself that, after due diligence, the party could not raise the said amendment before the commencement of trial. Here, in this case, on simple perusal of the oral evidence, I find that, all the witnesses have been examined on behalf of plaintiffs. They have clearly admitted before the court that, prior to filing of the suit, the defendants were in possession of the suit property. The PW-1 himself was aware about the possession of the suit property before filing of the suit. So, the fact of possession would have to be reflected in the plaint itself. I think the plaintiffs are only taking chance to insert the relief of possession. It will reverse the cycle of the trial. So it is not proper to grant such relief at this stage. This proposed amendment is beyond perview of amendment of 7/7/2002 of the Civil Procedure Code in the proviso of O.6 R.17. Therefore, I am not inclined to accept the claim of the plaintiffs.

7 In consideration of all the facts and circumstances, alongwith the fag end of the trial, I hold the proposed amendment is not claimed with due diligence. It will cause un-necessary delay. Therefore, the application deserves to be rejected. In the result, I pass the following order.

ORDER

- 1 The application Exh.140 is hereby rejected.
- 2 No order as to costs.

Date:-26/08/2013.

(N.M.Waghmare)
Civil Judge,S.D., Barshi.