

Order Below Exh.No.28 in R.C.S No.163/2012

1. The defendants have filed the present application for permission to carry out the amendment in their W.S by adding para No.19 after the para No.18 in W.S. It is seen by way of proposed amendment the defendants have alternatively claiming the owner-ship of the suit property by way of adverse possession, as they were in the possession of the suit property from 05/05/1989 in view of mutation entry No.946.

2. The plaintiffs have filed their say to this application at Exh.30 in which they have contended that the application is not legal, correct and proper. The defendants are claiming the adverse possession by way of proposed amendment as they are in the possession of the suit property since 05/05/1989. It means that they have known the said fact before filing their previous W.S, however they have not mentioned as to why they have not raised the said plea in their previous W.S at Ex.23. So also, the nature of the previous W.S will be changed if the amendment is allowed. Therefore, the plaintiff prayed to reject the application.

3. In the light of contents of the application and say of the plaintiff on it following points arise for my determination and my findings thereon with reasons are as under.

Sr.No.	Points	Findings
1.	Whether the amendment sought is necessary to decide the real controversy between the parties ?	Yes
2.	What order ?	As per final order

4. I have perused the proposed amendment in W.S in the light of plaint and previous W.S of defendants at Exh.23. It is seen that by way of the proposed amendment, defendants are taking the contradictory plea of adverse possession as they are in the suit properties from 05/05/1989. It is well settled law that the defendant can take contradictory plea in his W.S. It is also well settled that liberal approach can be taken while deciding the amendment application of W.S than amendment in plaint. As already discussed the defendants can take contradictory plea in their W.S. By way of proposed application, the defendants are taking the plea of owner-ship by adverse possession. Therefore, to avoid multiplicity of proceeding and to decide the controversy between the parties at once, the amendment requires to be allowed. However, there is no proper exclamation as to why previously, the plea of adverse possession which they are taking by the proposed amendment is not taken. Therefore, the application is granted subject to cost of Rs.1,000/- to be paid by the defendants to the plaintiff. Thus, I pass the following order.

ORDER

1. Application is allowed.
2. Defendants to carry out amendment in their W.S, as prayed on payment of cost of Rs.1,000/- to the plaintiff within 14 days from the date of this order and thereafter to place the amendment copy of W.S on record.

Khandala
Date : 07/02/2015

(N.N.Joshi)
Civil Judge Jr. Dn, Khandala.

