

MHST100001992019

R.C.S.No. 19/2019(Jaywant Eknath ShirkeVs.Ashish Ashok Naidu etc)ORDER BELOW EXH.53 IN R.C.S. NO.19/2019

1. The plaintiff filed suit for permanent injunction and filed this application vide Exh. 53 below Order VI Rule XVII for amendment of the plaint. The defendant filed say to this application vide Exh. 58 and opposed the application.
2. According to the plaintiff, he filed suit for permanent injunction and before decision of application below Exh. 5 and Exh. 36 the defendant during the pendency of the suit have demolished the suit property illegally. According to the plaintiff the defendant demolished the suit property in order to cause obstruction to the rights of the plaintiff as tenant in the suit property. Therefore, it is necessary for the plaintiff to amend the suit and add Para No. 6-A, Para No. 8-A, Para No. 9-A, 1 & 2 in the original plaint.
3. On the other hand as per the say of defendants the application is totally false and according to the defendant, the defendants have not demolished the suit property because according to the defendant the suit property is different and the plaintiff cannot carry out the amendment in respect of the property which is not the suit property. According to the defendant the proposed amendment is not related to the main pleading of the plaint and therefore the plaintiff cannot pray for the amendment in respect of the property which is not a part and parcel of the original suit property. According to the defendant, if the

amendment is allowed then the nature of the suit will be changed and there will be complexity in the suit. According to the defendant the proposed amendment is time barred and the plaintiff filed this application at belated stage in order to cause delay in the suit when the suit was posted for evidence of the plaintiff. Therefore the defendant lastly prayed that the application of plaintiff may kindly be rejected.

4. I have heard, Shri. D. S. Shelar, the Ld. counsel for plaintiff and Shri. S. S. Chorage, the Ld. counsel for defendants. Perused the record. The learned counsel for plaintiff urged that the proposed amendment is necessary for the plaintiff because according to him the defendant's demolished the suit property during the pendency of the suit and therefore demolition will affect the tenancy right of the plaintiff. Therefore, he prayed that his application may kindly be allowed. On the other hand the Ld. counsel for defendant's urged that the plaintiff is not claiming any relief in respect of the suit property. According to him, the plaintiff cannot claim any right in the property by way of amendment which is not part and parcel of the suit property. Therefore according to him by way of amendment the plaintiff cannot pray for new relief which was arisen out of new cause of action. According to him the plaintiff may filed separate suit. Therefore lastly, he prayed that an application of plaintiff may kindly be rejected.

5. In support of the application the plaintiff relied on the Xerox copy of Rent Receipt dated 13.08.2018 and Electricity Bill of Central Hair Dressings. On the other hand the defendants did not file any document in support of their say. The plaintiff relied on the case law of Hon'ble Bombay High Court in "**Filomena**

Mudgal (since Deceased), by L.Rs. Vs. Maria Alina Augustas Rodrigues” reported at 2023(5) ABR 253 in which Hon'ble Bombay High Court held that right of the tenancy does not extinguish with destruction of the tenanted premises. The plaintiff also relied on the case law of Hon'ble Punjab and Haryana High Court in **“Kamal Singh Vs. Joint commissioner and Anr.”** reported at AIR Online 2023 P & H 1022, in which Hon'ble Punjab & Haryana, High Court held that *“It is trite law that merits of proposed amendment in the plaint are not required to be gone in to at the stage of consideration of the application under Order 6, Rule 17, C.P.C. Question as to whether at the time of the filing of the suit, the building in question was in existence or that it was demolished during the pendency of the suit, shall be adjudicated upon by the learned trial court in light of evidence that shall be laid by the parties.”*

6. The plaintiff also relied on the case law of **“Parappa Basappa Gurav Vs. Town Municipal Council, Terdal, Bagalkot”**, reported at AIR Online 2022 Karnataka 2242 in which Hon'ble Karnataka High Court held that *“The amendment to bring on record the subsequent event cannot be said to bring out a change in the nature of the suit. In the present case, the earlier pleading was a regard the right of the plaintiff to be in occupation of the premises and it is the Plaintiff's case that the same was allegedly interfered with by the defendant by demolishing the construction put up. Though it can be said that the plaintiff could have filed another suit seeking for such mandatory relief it is also trite law that all the reliefs sought for the plaintiff ought to be decided in the same suit for avoiding multiplicity of suits by allowing the amendment application.”* The plaintiff also relied on case law of **“Vishnu**

Kumar Vs. State Madhya Pradesh reported at AIR Online 2023 MP20 in which Hon'ble Madhya Pradesh High Court held that *"After hearing learned Counsel for the parties, this Court is of the view that the reasoning assigned by learned Court below cannot withstand judicial scrutiny as the nature of the suit in question will not change and the relief of compensation firstly is based on subsequent events and would be a consequential relief and would depend on grant of decree of declaration, accordingly, impugned order dated 23/11/2022 passed by First Civil Judge, Junior Division, Pohari, Dist. Shivpuri in Civil Suit No. 30A/2020 is hereby set aside. The application filed by the petitioner under Order 6 Rule 17 of C.P.C. is allowed. "*

7. On the other hand defendants also relied on the case law of Hon'ble Madras High Court in **"Bhagavatula Gopalakrishnamurthi and others Vs. Dhulipalla Sreedhara Rao and another"** reported in AIR 1950 MADRAS 32 in which Hon'ble Madras High Court held that, the amendment on the plaint is not allowed with the facts available to the plaintiff but not stated in the original plaint. The defendant further relied on the case law of Hon'ble Supreme Court in **"The Municipal Corporation of Greater Bombay Vs. Lala Pancham and others"** reported at AIR 1965 SC1008 in which Hon'ble Supreme Court held that amendment of the plaint introducing the new case should not be allowed. Further the defendant relied on the case law of Hon'ble Supreme Court in **"A. K. Gupta and Sons Ltd. Vs. Damodar Valley Corporation"** reported in AIR 1967 SC 96 in which Hon'ble Supreme Court held that "amendment of the pleadings introducing new case can not be allowed if the suit on such case is barred".

8. Further defendant relied on the case law of **“Bhubaneswar Patel Vs. Janak Patel and others reported at AIR 1976 Orissa 216** in which Hon’ble Orissa High Court held that *“the proposed amendment of the plaint Where the plaintiff’s sought for declaration on the strength of their purchase and by proposed amendment claimed title by inheritance, the amendment would alter the very foundation of the claim and introduce a distinct and separate cause of action converting the suit into another of a totally different character necessitating a fresh trial from the beginning. Expediency of avoiding multiplicity of proceedings is no around to allow such an amendment.”* The defendant further relied on the case law of **“Kumarswami Gounder and others Vs. D. R. Nanjappa Gounder (dead) and others** reported on AIR 1978 Madras 285, in which Hon’ble Madras High Court held that *“When the amendment sought for sets up a totally different cause of action which ex-facie cannot stand on a line with the original pleading, courts cannot allow such application for amendment. A pleading could only be amended if it is to substantiate, elucidate and expand the pre-existing facts already contained in the original pleadings; but under the guise of an amendment a new cause and a case cannot be substituted and the courts cannot be asked to adjudicate the alternative case instead of the original case. Though it is expedient under certain circumstances to take into consideration the supervening facts in the court of a litigation which is long drawn, yet the march and lapse of such time alone cannot be the foundation to mechanically accept the request for amendment because due to such passage of time, several events have happened and several matters have intervened. It would be hazardous to accept such an application for amendment to a plaint on the only ground of passage*

of time and change of circumstances. This is more so when the application for amendment is an after-thought and, therefore, lacks bona fides.”

9. I have read all the above case laws and all the above case laws of Hon'ble Supreme Court and Hon'ble High Courts are relevant. Perused the record, along with the documents. By way of an application under Order 6 Rule 17 the plaintiff wanted to add Para No. 6-A, Para No. 8-A and Para No. 9-A, 1 & 2 in the original plaint. The plaintiff is ready to deposit the court fee for the new reliefs sought against the defendants. In the application below Exh. 53 it is the claim of the plaintiff that the defendants during the pendency of the suit have demolished the suit property and constructed new building over it. In that building there are two new shops. Therefore by way of amendment the plaintiff wanted to claim his tenancy rights in those two new constructed shops. However, from perusal of the plaint in Para No. 1, the suit property is Saloon shop of width North-South 20 feet and East-West 5 feet, total Area 10X11 feet oota and the four boundaries towards east: open land S. No. 64, towards south: the municipal road, towards west: the main building in S. No. 64 and towards North: the open land in S. No. 64. However, this suit property is adjacent to the land in S. No. 64, Old Municipal House No. 39/40 and New House No. 41/42 Current No. W1000048. Therefore, it is very much clear that the suit property is not part and parcel of S. No. 64 in which the plaintiff is claiming his right by way of amendment. Basically the newly constructed building which is constructed after the demolition of the old building is towards eastern side of the suit property.

10. Therefore it is very much clear that the suit property is not demolished by the defendants and the new building is not constructed over the suit property. It further shows that the suit property is totally different than the newly constructed building on the S. No. 64. However the plaintiff have not disclosed that fact in his application of amendment that the suit property is different and the demolished building is adjacent to the suit property. In fact the plaintiff wrongly claimed that the defendants have demolished the original suit property during the pendency of the suit and therefore claiming that his tenancy rights affected due to over act of the defendants. Therefore, it specifies that the plaintiff has not come with the clean hands and misleading the court by claiming that suit property is demolished by the defendant. Though the defendants have stated in their say that, they have not demolished the suit property. The case laws relied by both the parties are relevant to the present case. As stated by Hon'ble Supreme Court in the case of Municipal corporation of Greater Bombay (Supra) and A. K. Gupta and Sons Ltd. (Supra), the plaintiff cannot claim by way amendment introduce new case into the original suit. In fact the proposed amendment is not relating to the suit property and it is in respect of the property which is adjacent to the suit property. Therefore, basically the plaintiff can not claim any relief in respect of the property which is not part and parcel of the suit property.

11. Therefore, from the above reasons the proposed amendment is neither necessary for elucidating the dispute between the parties nor for avoiding multiplicity of the suit. In fact it can be said that an application is misleading to the court by claiming amendment in respect of City Survey No. 64 by showing

it as the suit property. Therefore, for the above reasons the plaintiff is not entitled to carry out the proposed amendment. Accordingly, I proceed to pass the following order.

ORDER

- 1] The application below Exh.53 is rejected.
- 2] Cost in cause.

Date: - 09/02/2024

(A. D. Margode)
Civil Judge Junior Division
Mahabaleshwar.

CERTIFICATE

I affirm that the contents of this P.D.F. file Order are same, word to word, as per the original Order.

Name of the Stenographer :S. S. Kadam,
(Stenographer, L.G.- Grade -III)
Court :Civil Court Junior Division,
Mahabaleshwar
Date : 09-02-2024
Judgment signed by the P.O on: 09-02-2024
Judgment uploaded on : 13-02-2024