

ORDER PASSED BELOW EXH. 94 IN R.C.S. NO. 139/2002

1. The plaintiff has filed this application for the amendment in his pleading. The case of the plaintiff is as under.

2. The plaintiff no.2 has cultivated a crop of sugarcane in block no. 285 in an area of 15R. The crop was grown by the plaintiff no.2 was sent for crushing to the sugar factory in the name of defendant no.1. The defendant no.1 also took the bill of the sugarcane from the factory in his name and as such by order at exh.33, this court has granted temporary injunction against the defendant no.1 from withdrawing the amount of sugarcane bill, as well as by order below exh.36, this court has directed the defendant no.1 to deposit the amount of sugarcane bill to the tune of share of plaintiff no.2. In these circumstances due to the oversight, the plaintiffs failed to amend their prayer clause in the suit & accordingly now the plaintiffs have suggested the amendment that till the decision of the suit the defendant no.1 shall be restrained temporarily from obstructing the plaintiff no.2 in 7 ½ R area out of block no. 285 which is in possession of plaintiff no.2 as per the family arrangement.

3. The defendant contested this application by filing his say at exh.97. The grounds of objection of the defendant are

as that the defendant no.1 has withdrawn the bill of sugarcane prior to the orders of the court, as well as the defendant has deposited the amount as per the orders of the court. It is also the case of defendant that the proposed amendment is with respect to the temporary relief asked by the plaintiff and as such it is contrary to the main pleadings of the plaintiff. The proposed amendment is sought by the plaintiff only to bring the evidence about separate cultivation of plaintiff nos. 1 and 2. Hence this application deserves to be rejected.

4. From the rival contention of both the parties following points arose from my determination. These points, finding thereon with reasons are as follows.

POINTS

FINDINGS

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| 1. Whether proposed amendment is necessary for adjudication of the suit ? | In the negative. |
| 2. Whether proposed amendment would change the nature of the suit ? | In the affirmative. |
| 3. Whether proposed amendment would likely to cause prejudice to the defendant? | In the negative. |
| 4. What order ? | As per final order. |

REASONS

5. At the time of argument the learned advocate for

plaintiff drew my attention on the orders passed by the court below exh.33 and exh.36 as well as order passed by The Hon'ble Additional District Judge, Karad in Misc. Civil Appeal No. 6/2005. The learned advocate submitted that as per the orders of this court, the defendants were retrained from obstructing plaintiff's possession over the block no. 285 to the tune of 35 guntha area possessed by plaintiff nos. 1 and 2 with defendant no.1. The said order was modified by the orders of The Hon'ble Additional District Judge, Karad in Misc. Civil Appeal No. 6/2005. By this order The Hon'ble Court has prima facie held that the plaintiff no.2 is having possession over 25 guntha area and the block no. 285 is divided in five strips admeasuring 25 guntha each and each of the plaintiff and defendant nos. 1 to 3 are having possession over it. Hence as there is no prayer on behalf of plaintiff no.2, the proposed amendment has suggested such prayer only with view to take technical support for the order passed by The Hon'ble Additional District Judge, Karad. Hence he submitted to allow this application.

6. The learned advocate for defendant firstly, submitted that the orders passed by this court as well as passed by The Hon'ble Additional District Judge, Karad are purely of temporary in nature and these orders were passed only considering the prima facie possession or the prima facie case of the parties. Now by

this amendment the plaintiff has suggested amendment in his pleadings which are already prima facie considered by this court and as such at this stage the proposed amendment is not essential for adjudicating the dispute between the parties. Hence he submitted to reject the application.

7. **AS TO POINT NO. 1 TO 3:-**

By this amendment the plaintiff is proposing his pleading about his possession over 17 ½ guntha area out of block no. 285. The plaintiff has raised the ground for such amendment is that prima facie this court as well as the First Appellate Court has held the possession of plaintiff no.2 over block no. 285 and for technical support of those orders the present amendment is essential.

8. The plaintiff has instituted this suit for declaration that the plaintiff no.1 has become the owner of the suit property by the will of her mother, Chandrabai and consequentially the plaintiffs have prayed for separation of their shares in the suit land. The plaintiff has also prayed for temporary injunction that the defendant nos. 1 and 3 should not disturb the possession of plaintiff no.1 over the 35R area out of block no. 285 which is in possession of the plaintiff as per family arrangement. The plaint also shows the pleading that since 1977-78 the plaintiffs, defendant nos. 1 to 3 and

their mother, deceased Chandrabai, were cultivating the suit land separately as per their family arrangement. Accordingly as per that family arrangement the defendant nos. 1 to 3 and plaintiff no.2 have allotted 35R area out of the suit land to plaintiff no.1 and their deceased mother Chandradbai. The defendant nos. 2 and 3 were allotted 1 acre 5 guntha area and plaintiff no.2 and defendant no.1 were jointly allotted 35 guntha area out of block no. 285. Hence main pleadings about the plaintiff no.2 are that he was allotted an area of 35 guntha jointly with defendant no.1. Considering these pleadings this court has granted injunction against the defendants as well as the order of this court was modified in Misc. Civil Appeal No. 6/2005. Though both the parties submitted that against the order passed in Misc. Civil Appeal No. 6/2005, the defendants have preferred writ petition before The Hon'ble High Court. No one has produced the documentary evidence about any order passed by The Hon'ble High Court. Hence at this stage the order passed by The Hon'ble Additional District Judge, Karad in Misc. Civil Appeal No. 6/2005 is final order. Hence it is necessary to consider what the order of The Hon'ble Additional District Judge speaks. The order passed in Misc. Civil Appeal No. 6/2005 clearly shows that the defendant nos. 1 to 3 are restrained temporarily from obstructing peaceful possession of plaintiff no.1 over northern side land strips admeasuring 25 guntha

out of block no. 285. Hence prima facie The Hon'ble Additional District Judge, Karad has considered the possession of plaintiff no.1 in 25 guntha area. The order further shows that The Hon'ble Court has directed the parties to cultivate block no. 285, considering that this block is divided in five land strips in east west direction and each strip is admeasuring 25 guntha. The Hon'ble Court has also directed the parties that the northern most strip is in possession of plaintiff no.1, next to it is in possession of plaintiff no.2 and next to it the strips are in possession of defendant nos. 1 and 2 and lastly southern most strip is in possession of defendant no.3. At this stage as this order is not modified or quashed by The Hon'ble High Court, the order is in existence till the final decision of the suit. The proposed amendment suggested by the plaintiff is only with respect to 17 ½ guntha area out of block no. 285 claiming that such area is in possession of plaintiff no.2. Now by the order of The Hon'ble District Judge in Misc. Civil Appeal No. 6/2005, prima facie it is adjudged that plaintiff no.2 is having possession over 25 guntha area out of block no. 285. Hence the amendment suggested by the plaintiff, on the ground that his possession is already adjudged in Misc. Civil Appeal No. 6/2005, is contrary to the order passed by The Hon'ble District Judge. Further the plaintiff has only suggested the amendment in the prayer clause of the suit and it is in the nature "praying the

temporary relief ” with respect to 17 ½ R area out of block no. 285. Hence the amendment suggested by the plaintiff is about the facts which are prima facie to be considered by this court. Hence for the final adjudication of the suit, proposed amendment is not essential as well as in main pleadings the plaintiff has come with the case that the plaintiff no.2 and defendant no.1 were jointly allotted 35 guntha area in block no. 285 as per the family arrangement of the parties. Hence the amendment suggested by the plaintiff being only of temporary nature is not essential for the final adjudication of the suit. Even though considering the temporary nature of the proposed amendment, it is suggested on the basis of the orders of the court which are already passed. Hence the prima facie possession of plaintiff no.2 being already adjudged by the competent court. The suggested amendment is not necessary.

9. The plaintiffs have based their suit on the pleadings that the deceased mother of plaintiffs and defendant nos. 1 to 3 have bequeathed her share in favour of plaintiff no.1 and the plaintiff nos. 1 and 2 with defendant no.1 are having separate possession with a particular area of 35 guntha as per their family arrangement. Hence for the final adjudication of the suit, the proof of these facts are necessary to be considered and as such now plaintiff suggesting only a prayer on the assumption that he is having

separate possession over 17 ½ guntha land is contrary to his pleading. Hence I find that the proposed amendment would likely to change the nature of the suit with respect to the pleading about the possession of plaintiff no. 2 and the prayer about a specific area.

10. Considering the nature of the suit and the defence taken by the defendants that there was a partition of the agricultural land, the proposed amendment suggested only in the prayer clause will not prejudice the defendant. Accordingly the point no. 1 is answered in the negative, point no.2 in the affirmative and point no.3 in the negative and point No. 4 is answered by way of following order.

O R D E R

1. The application at exh.94 is hereby rejected.
2. Costs in main cause.

Place : Patan
Date : 26.11.2008

(P. P. Kestikar)
Jt. Civil Judge, Junior Division,
Patan.