

ORDER BELOW EXH.308 IN R.C.S. No.167/2005

NATURE OF THE APPLICATION

1. This is an application filed by plaintiffs seeking amendment in the plaint under O.6 Rule 17 of the Code of Civil Procedure.

FACTS IN THE APPLICATION

2. Plaintiffs have contended that, the suit is filed for declaration and injunction. After filing of suit defendant nos.6 to 12 has executed a sale-deed in favour of defendant no.18 on 25.01.2019 in regard of certain suit properties. Therefore it is necessary to amend the plaint so as to plead about the said sale-deed. The amendment will not change the nature of the suit. The amendment if allowed, will help to serve the interest of justice. On these grounds plaintiffs have prayed for grant of the application.

FACTS IN THE SAY

3. Defendant nos.17 and 18 have filed their say and denied all the material averments in the application. They submitted that, plaintiffs have protection provided by section 52 of The Transfer of Properties Act. They also contended that plaintiffs are trying to prolong the suit. The present suit is for declaration. Therefore, rights of parties are not decided. For this reason also plaintiffs present application is not maintainable. For all these reasons, application is liable to be rejected.

POINTS AND FINDINGS

4. Upon perusing application and say the following points arise for my consideration and I record my findings thereon as under for the reasons to follow:

POINTS

FINDINGS.

- | | | |
|----|--|---------------------|
| 1. | Can the amendment be allowed, as prayed for? | Allowed. |
| 2. | What order? | As per final order. |

REASONS AS TO POINT NO.1

5. The purpose and object of Order VI Rule 17, C.P.C is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. Mere delay cannot be a ground to reject the amendment. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interest of justice and the liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. It is also well settled that even amendments modifying the original cause of action or adding another may be allowed if the entire subject-matter of the suit is not altered. Introduction of a new cause is no ground for refusing to allow amendment so long as the defendant has the opportunity of meeting the new case by amendment of the written statement and by leading evidence in respect of his defence. Avoidance of multiplicity of suits is also one of the relevant considerations.

6. Plaintiffs have filed this suit for declaration and injunction. The proposed amendment is sought for make pleading about the sale-deed executed in favour of defendant no.18. If the application is allowed, it will not change nature of the suit. Moreover, it will avoid multiplicity of the proceeding. Therefore, relying on the principles discussed supra I am granting this application.

7. However, plaintiffs have filed present suit in the year 2005 and Issues are framed on 10.01.2012. Since, then the suit is pending for hearing. The over all conduct of plaintiffs is nothing but to delay the suit. Prior to this the plaintiff has already filed 11 amendment applications and this is 12th

amendment application filed by plaintiffs in same suit. This shows that, plaintiffs are taking advantage of procedure supplied by the Law in order to harass defendants. On 12.03.2012 passed a specific order was passed below Exh.1 and kept the matter for dismissal order. Then also till today the matter is pending for hearing. Plaintiffs also contended that, defendants are making scene of settle the matter by way of compromise, so that also the suit delayed. But in actual when this court called parties for settlement, plaintiffs themselves denied the compromise proposal which was initially offered by themselves only. When the matter further proceeded after failure of settlement, plaintiffs have filed this application. The suit lingered because of this application. Therefore, defendant no.17 and 18 needs to be compensated by awarding suitable costs which I assess at Rs.2500/- and to pay costs of Rs.2500/- to the Taluka Legal Aid, Phaltan for their repeated applications of amendment, accordingly I answer point no.1 in the affirmative. Hence, I proceed to pass the following order.

ORDER

1. The application Exh.308 is granted subject to costs of Rs.2500/- to be paid to defendant no.17 and 18 and Rs.2500/- to be deposited to Taluka Legal Aid, Phaltan on or before 22/03/2019; failing which the application shall stand rejected, automatically.
2. The defendant no.17 and 18 are entitled to receive costs Rs.2500/-
3. Plaintiffs are directed to carry out the amendment immediately after depositing the costs and before 22/03/2019. Plaintiffs are further directed to supply copies of amended plaint, failing which the application granting amendment shall stand rejected and if amended carried will be struck out; automatically.

Place : Phaltan.
Date : 18.03.2019

(S. M. Bohara)
Jt. Civil Judge (J.D.) Phaltan.