

**ORDER BELOW EXH.415**

This is an application under Order 6 Rule 17 of the C.P.C. for amendment of the plaint. Perused the application, reply (Exh.419) filed by defendant nos.6 to 9, 11 and 12 and reply (Exh.417) filed by defendant nos.17 and 18. Heard, the learned counsel Shri. K. B. Shinde for plaintiffs, the learned counsel Shri. S. A. Jarad for defendant nos. 6 to 8, 11 and 12 and the learned counsel Shri. S. M. Kadam for defendant nos.17 and 18.

2. It is the contention of plaintiffs that this court has passed the status quo order at Exh.215 regarding suit property no.79/1. In May 2024, there was summer vacation to the court. Moreover, plaintiffs reside at Gujarat. Defendant nos.6 to 12, 17 and 18 took advantage of same and in order to complicate the suit, they have made illegal construction of the shed on the adjoining road in survey no.79/1. Because of that the rights of plaintiffs in the said suit property infringed. Hence, the proposed amendment is necessary. The proposed amendment is nominal and technical in nature. It does not change the nature of the suit. Due to subsequent events took place during the pendency of the suit, plaintiffs have to seek proposed amendment. If the proposed amendment is allowed then it will not prejudice defendants. On the contrary, if it is not allowed then it will cause prejudice to plaintiffs. Hence, plaintiffs prayed to allow the instant application.

3. Vide reply (Exh.418), defendant nos.6 to 9, 11 and 12 resisted the instant application on the ground that it is false and

imaginary. According to these defendants, the construction is old one and is not raised in May 2024. According to these defendants, defendant no.10 raised his shed in the year 2014, defendant no.11 raised his shed in the year 2016, defendant no.8 raised his shed in the year 2016, defendant no.12 raised her shed in the year 2017, defendant no.7 raised his shed in the year 2016 and defendant no.9 raised his shed in the year 2016. These defendants have also taken electricity connection in their sheds. They are also paying village Panchayat tax. Plaintiffs have purposefully hidden these facts from the court. It shows that plaintiffs have not come before this court with clean hands.

4. Plaintiffs are misinterpreting the order passed below Exh.215. The said order is concerned with plaintiffs and defendant nos.17 and 18. The instant application is filed to delay the suit. The cross-examination of plaintiff no.2 is part heard. After commencement of the trial, the instant application is moved. Hence, these defendants have prayed for rejection of the instant application.

5. Vide reply (Exh.417), defendant nos.17 and 18 resisted the instant application on the ground that it is filed to delay the suit. According to defendant nos.17 and 18, the application at Exh.215 was moved by them in their counterclaim. In the proceeding of the counterclaim, the court has issued status quo order at Exh.215. These defendants have denied about the erection of the shed. According to these defendants, the instant application is moved by plaintiffs in order to delay and protract the instant suit. In view of

provisions of Order 6 Rule 17 of the C.P.C., the amendment cannot be allowed after commencement of the trial. Hence, these defendants have prayed for rejection of the instant application.

6. I have carefully gone through the record of the case and also gave thoughtful consideration to the submissions made by both learned counsels. All the learned counsels argued on the footing of their respective contentions. At the outset, it needs to be noted that the instant suit is for declaration, possession, permanent injunction and mandatory injunction.

7. It is pertinent to note that by virtue of the instant application, plaintiffs want to bring on record subsequent events took place during the pendency of the instant suit. It is the contention of plaintiffs that during summer vacation in the month of May, 2024, defendant nos.6 to 12, 17 and 18 have erected the sheds on suit property no.79/1. It needs to be noted that though defendant nos.17 and 18 have denied about erection of the so called sheds but defendant nos.6 to 9, 11 and 12 have admitted about erection of sheds. However, according to them they have erected the sheds in the year 2014, 2016 and 2017. Defendant nos.6 to 9, 11 and 12 have also placed on record various electric bills in their names.

8. As such, it appears that the construction of sheds during the pendency of the suit is admitted to defendant nos. 6 to 9, 11 and 12. However, the only dispute is about the time of its erection. To my mind, the said thing can be decided at the time of the trial. The above thing clearly shows that during pendency of the instant suit

there were erection of sheds on suit property no.79/1 by defendants. The said fact is definitely the subsequent event so far as the instant suit is concerned.

9. It needs to be noted that in the instant suit the cross-examination of plaintiff no.2 is part heard. As such, there is no doubt that the instant application came to be moved after the commencement of the trial. Thus, the proviso to Order 6 Rule 17 of the C.P.C. will definitely come into play. However, the fact remains that it is the contention of plaintiffs that in the month of May 2024, defendant nos.6 to 12, 17 and 18 have erected the sheds on suit property no.79/1. Therefore, by virtue of the instant application, plaintiffs want to bring on record subsequent events took place during pendency of the instant suit more particularly after commencement of the trial. Thus, there remains no question of raising the matter before the commencement of the trial. Hence, proviso to Order 6 Rule 17 of the C.P.C. will not create any hurdle to the case of plaintiffs.

10. The learned counsel for plaintiffs has placed on record the ruling of the Hon'ble Bombay High Court reported in **2003 (1) Mh.L.J. 233** between **Krishnaji Moghe Vs. Sitaram Shende**. In the supra ruling, it is held that if subsequent events are in relation to the subject matter of the dispute between the parties and necessary to decide real controversy, merely delay in filing application for amendment or because a party to the proceeding will have to lead evidence consequent to the amendment of the pleadings, can not be

a justification for refusal of the application for amendment. I find that the proposition of law laid down in the supra ruling as a guiding principle of law.

11. He further relied upon the ruling of the Hon'ble Bombay High Court reported in **2007 (6) Mh.L.J. 740** between **Basavanappa Bhimsha Koli @ Jamdar Vs. Sunil Basavanappa Jidge**. In the supra ruling, it is held that merits or correctness of the averments sought to be added by proposed amendment need not be considered by the trial court. Amendment ought to be allowed where there will be no change in the nature of the suit and will avoid multiplicity of the proceedings. I find that the proposition of law laid down in the supra ruling as a guiding principle of law.

12. He further relied upon the ruling of the Hon'ble Supreme Court reported in **AIR 2004 SC 4102** between **Pankaja and another Vs. Yelappa (D) by L.Rs.** In the supra ruling, it was held that amendment sought after relief is barred by limitation can even be allowed in appropriate cases if that subserves cause of justice and avoids further litigation. However, in the case in hand, there is no question of any relief getting barred by limitation hence, the supra ruling is not at all helpful to the case of plaintiffs.

13. Now, coming back to the hub of the matter, as discussed above, by virtue of the instant application plaintiffs want to bring on record subsequent events concerning to suit property no.79/1. In my view, the proposed amendment is very necessary to decide the real controversy between parties. Moreover, if the proposed amendment

is allowed then in no manner it will change the nature of the suit. Similarly, the proposed amendment is very much necessary to avoid the multiplicity of the proceedings. Moreover, if the proposed amendment is not allowed then it is plaintiffs who will suffer serious prejudice as admittedly defendants have erected sheds on suit property no.79/1. It is pertinent to note that merely the suit is very old is no ground to reject the amendment application. Because, in view of subsequent events, the instant application is having merits. Therefore, I am inclined to allow the instant application. Consequently, I proceed to pass following order.

ORDER

1. The application stands allowed.
2. The plaintiff is permitted to carry out the proposed amendment in the plaint on or before next date.
3. The plaintiff is directed to place on record the amended copy of the plaint and further directed to supply copy of the same for defendants.
4. Costs in cause.
5. As the suit is more than ten years old hence, parties are directed to expedite the same.

Place : Phaltan.
Date : 19/11/2024

(R. D. Bhuyarkar)
Jt. CJJD