

MHST160011322023

R.C.S.No. 462/2023
Shankar Vs. Vijaysingh & others

Order Below Exh.82
(Passed on 26th March, 2025)

This is an application filed by the plaintiff under Order VI Rule 17 of the Civil Procedure Code. He contended that he wants to amend his pleading in respect of his exclusive possession to the extent of “5 Ane 4 Paise” i.e. 6.89 HR out of total 10 Ane 8 Paise i.e. 13.79.32 HR, in plaint paragraph No.1. The defendant No.24-A to 38 have admitted the suit claim. He further submitted that the plaintiff and defendant No.24-A to 38 have acquired title over the suit property by way of their adverse possession over it. They are in its peaceful and settled possession since long i.e. 50 to 60 years back. He has developed the suit properties. In fact, the suit property is in his possession since his forefathers. He maintains his family out of the agricultural income of the suit property. He is also dealing in the business of milk. His cattle graze in the suit field.

2. The plaintiff further submitted that defendant No.1 to 12 have obtained orders from the Revenue Authorities in their favour by misleading the facts. The suit property is not yet partitioned by metes and bounds. In fact, the original owners i.e. defendant No.1 to 11 and 13 to 15 were not personally cultivating the suit land. Though, the defendant Nos. 1 to 11 and 13 to 15 are having common and undivided share in the suit property, the sale transaction dtd. 26.05.2023 have

been brought into existence without the consent of defendant No.13 to 15. The power of attorney holder i.e. defendant No.12 has filed false written statement at Exh.18. As the plaintiff and defendant No.24-A to 38 are cultivating the suit land since 1963-64 without any disturbance and obstruction, they have acquired its title by virtue of adverse possession over the suit property. They are ready to pay the requisite Court fees stamp in respect of relief of proposed declaration. The proposed relief of declaration is well within the limitation. It is also submitted by the plaintiff that, it is required to claim all the reliefs in one and same suit about the subject matter including all the necessary parties and properties. Therefore, the proposed amendment be allowed, as it is necessary and will avoid the multiplicity of litigations. It will not change the nature of suit. It is necessary to determine the real controversy between the parties. Hence, he prayed to allow the application.

3. Defendant No.1 to 12 have replied the application at Exh.84 and thereby resisted the contentions made therein. They submitted that the application, itself is not tenable. The plaintiff is not having any right, title and interest over the suit property. They have filed their written statement at Exh.18. The present application is after thought and it is liable to be rejected. The defendants have obtained orders regarding tenancy dispute upto the Hon'ble High Court. The proposed amendment will change the nature of suit. If it is allowed, it will create obstruction to the peaceful possession of defendants over the suit property. For all these reasons, they prayed to reject the application by imposing compensatory cost.

4. Defendant No.24-A to 38 have also filed their reply at Exh.92. They submitted that the plaintiff and themselves are in possession of the suit property since long. They have, in fact admitted the suit claim vide their written statement at Exh.49. Ultimately, they submitted that they have no objection for the proposed amendment, as it is necessary to determine the real controversy between the parties.

5. Perused the application and say alongwith the entire record. Heard both the sides, at length. Ld. Advocate for the plaintiff argued that the trial is not yet commenced. The defendants have admitted the possession of plaintiff over the suit property in earlier revenue proceedings. The 7/12 extract of the suit property shows the possession of plaintiff's predecessor. Even, his possession is substantiated by the panchanama dtd. 16/09/2016 prepared by Circle Officer and Talathi. Defendant No.12 in his written statement in paragraph No.5, mentioned about the possession of plaintiff by way of adverse possession, which shows his previous knowledge.

6. The Learned Advocate for the plaintiff has relied upon following decisions:

- (i) **Mr. Teotonio Faustino Vas & Anr. Vs. Smt. Ana Maria Rodrigues & ors. reported in 2018(6) ALL MR 582**, wherein the Hon'ble Bombay High Court has held that –
“amendment of pleadings ought to be allowed where purpose of the proposed amendment is to elaborate the defence and to take additional plea in support of the case.”
- (iv) **Rajesh Kumar Aggarwal & ors. Vs. K.K. Modi & ors. reported in AIR 2006 SC 1647**, wherein the Hon'ble

Supreme Court has observed that – “The object of the rule is that the Courts should try the merits of the case that come before them and should consequently allow all the amendments that may be necessary for determining the real question in controversy **between the parties, provided it does not cause any injustice or prejudice to the other side.** Order 6 Rule 17 consists of two parts, whereas the first part is discretionary (may) and leaves it to the Court to order amendment of pleading. The second part is imperative (shall) and enjoins the Court to allow all the amendments which are necessary for the purpose of determining the real question in controversy between the parties. The real controversy test is the basis or cardinal test and it is the primary duty of the Court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed. If it is not, the amendment will be refused.

It is further held that while considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudicated at the stage of allowing the prayer for amendment.

Bom.C.R. 378, wherein the Hon'ble Bombay High Court held that – “it is now well settled that all such amendments which are necessary for deciding the real controversy in dispute have to be allowed. Such amendments can be allowed at any stage of the proceedings, albeit subject to the embargo placed in proviso to Rule 17 of Order 6 of C.P.C.

7. On the other hand, Ld. Advocate for defendant No.1 to 12 argued that the suit property cannot be identified, as its four boundaries are not mentioned in the plaint. The plaintiff has failed to show his legal possession over the suit property. The defendants have denied the plaintiff's case. If the proposed amendment is allowed, it will change the very nature of suit. The present application has been filed with malafide intention. The Revenue Authorities have concurrently held in the proceedings initiated before them that the plaintiff and his predecessors are not entitled for any tenancy rights. Even, the Hon'ble High Court has maintained the order passed by the Hon'ble Maharashtra Revenue Tribunal in Writ Petition No. 10257/2022 vide its judgment dtd. 28th March, 2023. The plaintiff is now estopped to change his earlier stand. For all these reasons, he prayed to reject the application.

8. The proposed amendment consists of two parts. Firstly, it relates to alleged possession of the plaintiff over specific portion i.e. 5 Ane 4 Paise out of Gat No.592/1 and second part relates to the relief of adverse possession over the suit property and the pleadings to that effect. Now, it is to be seen that whether both the parts of proposed amendment are necessary to be incorporated.

9. Before going into the necessity of the proposed amendment, it is required to see the averments in the plaint. The plaintiff has mentioned that 13 Hecter 79.32 R portion (10 Ane 8 Paise portion) out of Gat No.592/1 (total ad-measuring 20.69 HR), is the subject matter of present suit. Now, he wants to insert and specify his possession over 5 Ane 4 Paise portion in plaint paragraph No.1. No doubt, this first part of the amendment appears to be technical in nature. The plaintiff has filed the present suit claiming the relief of injunction and restraining defendant No.12 from taking possession of portion of the suit property on the basis of sale deed dtd.26/05/2023, without the order of the Court. Considering this prayer, the first part of proposed amendment of insertion of contents of “5 Ane 4 Paise portion i.e. 6.89 HR” appears to be necessary. Admittedly, the trial is not yet commenced. The insertion of these particular contents in plaint paragraph No.1 will not change the nature of suit. No prejudice will be caused to the other side.

10. So far as the second part of the proposed amendment is concerned, it is in respect of taking plea of adverse possession by the plaintiff over the suit property and declaring his title on that basis. Initially, the plaintiff has claimed his possession by virtue of tenancy rights since the time of his forefathers. Admittedly, the tenancy issue was agitated before the Hon’ble Revenue Authorities. Relevant documents have been filed by defendant No.12 alongwith list Exh.18. Its document No.7 is the copy of judgment dtd. 15th February, 2021 delivered by the Hon’ble Designated Member of the Maharashtra Revenue Tribunal, Bench at Pune in Case No. NS/X/1/2019 (B-179/19). Its prima facie perusal shows that the suit land was part of

original Survey No.85 and it was held to be the grass land, which was not suitable for the cultivation. Even, it was held that the plaintiff's predecessor was not in possession of said field on Tiller's day.

11. Further, it appears that the Hon'ble Bombay High Court in Writ Petition No. 10257/2022 vide its judgment dtd. 28th March, 2023 observed that the original Survey No.85 was excluded from the proceeding u/sec. 32G of the Maharashtra Tenancy and Agricultural Lands Act, 1948, as it was a hilly land and was used only for the purpose of quarrying. The Hon'ble High Court has also observed that the land was not under cultivation on the Tillers day and therefore, the provisions of Section 32 to 32 R of the Act were not at all attracted.

12. On the basis of aforesaid observations and the revenue proceedings filed by the plaintiff, it is clear that he has come with a specific case that he is a tenant in the suit property since the time of his forefathers. Now, by the proposed amendment he wants to change his earlier plea by contending that he has acquired title over the suit property by way of continued, undisturbed and settled possession. Definitely, this fresh plea amounts to new case, which is not permissible in the eyes of law. This is a suit for restraining the defendant No.12 and any other person on his behalf from taking possession from him without the orders of the Court. The further prayer for the relief of declaration is in respect of non binding force of the sale deed dtd. 26.05.2023 on the plaintiff. In such circumstances, the nature of suit is very clear and limited. It is well settled that the plaintiff cannot change his earlier stand by withdrawing his earlier pleadings. By the proposed amendment, the nature of suit will be changed and it will amount to allowing the plaintiff to take changed and fresh plea.

13. In view of the above discussion, it is clear that the second part of the proposed amendment in respect of the plea of adverse possession and the declaration of ownership on that basis is not maintainable. However, as discussed above, the first part i.e. alleged possession of the plaintiff over specific portion i.e. 5 Ane 4 Paise (6.89 HR) out of the suit property appears necessary to be inserted by way the proposed amendment. Resultantly, the application deserves to be partly allowed. Hence, the following order.

ORDER

1. The application (Exh.82) is hereby partly allowed.
2. The plaintiff to carry out first part of the proposed amendment i.e. alleged possession of the plaintiff over specific portion i.e. 5 Ane 4 Paise (6.89 HR) out of the suit property, in plaint paragraph No.1, till next date.
3. The second part of proposed amendment regarding the plea of adverse possession and the pleadings to that effect is not allowed.
4. After carrying out the aforesaid amendment, the plaintiff to file amended copy of plaint on record.

[Dictated and pronounced in open Court.]

Place : Wai
Date : 26.03.2025.

(R.M. Bhende)
Jt. Civil Judge Junior Division,
Wai, Dist. Satara.

CERTIFICATE

“ I certify that this Order uploaded is a true and correct copy of original signed Order”.

Order dictated on : 26.03.2025.

Order checked and signed on : 26.03.2025.

Uploaded by : S. S. Kumbhar.
Stenographer (Grade-III)

Uploaded on : 29.03.2025.