

ORDER

Perused application and say. Heard both sides at length.

The plaintiff has moved this court for amendment of plaint and addition of parties. The plaintiff submitted that in para no. 17 of exh. 12 the defendant has contended that Avtarsing has partitioned his land and put her daughter Gagandeep in possession of her share. They are not party to the suit. The defendant further contended in the written statement that he is in possession of the suit property under consent said Avatarsing. Accordingly, the plaintiff sought permission to add Avatarsing, her daughter Gagandeep as defendant in the suit and to amend the plaint by incorporating certain contentions about the proposed defendant that they have not authority to consent the defendant no. 1. The defendant strongly opposed the application submitting that the suit is pending since the year 2010. Deliberately, the plaintiff has not argued the application for grant of temporary injunction. Being while commissioner was appointed. It is the plaintiff who prolong the suit. This application is filed with the similar intention. The proposed amendment will change the nature of suit. The issues were framed long back on 17/12/2016, but evidence is not adduced. The application is not tenable, it be rejected.]

In the context of rival contentions, I have gone through the record. The suit is for mandatory and perpetual injunction. The plaintiffs are claiming title from the proposed defendant Avatarsing Kohali. In para no. 10, 11 and 12 of the written statement exh. 15 the defendant Ravi has contended that he has erected tin shed in the property of Avatarsing Kohali with his consent. In support of his consent he has filed affidavit of said Avatarsing at sr. no. 9 of list exh. 17.

In the light of the defence raised by defendant Ravi, it is emerged that Ravi is claiming under Avatarsing. The plaintiff are claiming that the defendant Ravi has erected shed illegally in their land. In such circumstances, effective and executable decree cannot be passed in the absent of Avatarsing and Gagandeep. They are proper and necessary parties.

Now the question remains that when defendant Ravi has claimed through Avatarsing in his written statement filed on 15/02/2010, the plaintiff has moved this application on 18/12/2017 i.e. after about 7 years, 10 months and some odd days. Apparently, the plaintiff has not assigned any reason for the belated filing of this application. The nature of suit will not change, if the proposed amendment is allowed. Similarly, it will not cause any prejudice to the defendants. The amendment is material and necessary for adjudication of controversy on merits. In order to avoid multiplicity of litigations, the request of plaintiff is worth consideration on certain costs. The delay

of about 94 months require to mulct costs of Rs. 10000/-. Accordingly, following order is passed.

ORDER

On payment of costs of Rs. 10,000/- (Rs. 5,000/- to the defendant and Rs. 5,000/- to D.L.S.A., Akola) on or before next date the plaintiff shall add the proposed defendants and carry out the amendments followed by filing amended copy of plaint. Failure to comply the order in stipulated time shall render it non est.

Sd./-

Date : 01/01/2018.

Civil Judg (Sr.Dn.), Washim.

Certificate.

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

Name of the Stenographer : Devendra V. Daware (Clerk-Cum-Steno)

Court Name : Civil Judge (Sr.Dn.), Washim.

Date : 01.01.2018

Order signed by the Presiding
Officer on : 01.01.2018

Order uploaded on : 02.01.2018