

ORDER BELOW EXH.17

By way of present application, the plaintiff is praying seeking amendment in plaint as per O. VI R. 17 of Code of Civil Procedure, in a suit for permanent injunction.

2] Briefly stated, the plaintiff has filed the present suit alleging that the defendant has created obstruction to his settled possession over the suit property by creating new way. It is the case of plaintiff that defendant had filed an application against the plaintiff for removal of encroachment of existing way on the suit property before Dy. Tahsildar on 26.12.2001. Thereafter, it appears that several rounds of litigation before the revenue authority have taken place between the plaintiff and defendant in respect of right of way over the suit field. It is the contention of the plaintiff that, during the pendency of proceedings the defendant has created altogether a new road in the suit field owned by him and as such there has been an obstruction to his settled possession over the suit property by defendant. Hence the present suit seeking permanent injunction has been filed by the plaintiff.

3] It is contended by the plaintiff that, at the time of filing the suit, due to oversight, certain information in relation to the suit has remained to be stated in the plaint. It is stated that in the cause title of the plaint, the words 'rasta na kadhta'(रस्ता न काढता) are to be withdrawn and on the place therein the words 'kadhun dilela rasta na vaparta'(काढून दिलेला रस्ता न वापरता) are required to be inserted on that place. It is further stated in the application that, similar amendments are required to be made in the paragraph 4 by

the withdrawing the words 'rasta na kadhta'(रस्ता न काढता) and words 'kadhun dilela rasta na vaparta'(काढून दिलेला रस्ता न वापरता) is required to be inserted on that place.

4] It is further submitted in the circumstances which led to filing of the present suit are required to be brought on record. For that purpose, the plaintiff has prayed for the insertion of para 5A as stated in the application, in the plaint. It is contended that no prejudice would be caused to the defendant and the nature of suit would not change as a result of amendment. The plaintiff on the above grounds has prayed for amendment of pleadings.

5] The defendant on the other hand has filed his say to the application and has strongly opposed the application on the ground that the proposed amendment prayed for by the plaintiff is based on totally imaginary facts and the same changes the nature of suit. The amendment sought to be carried out by the plaintiff, thus, is not permissible under law. Plaintiff by proposed amendment has trying to fill up the lacuna in the in the proceedings. It is further stated in the reply that the present amendment is only filed with a view to delay the proceedings. On this ground the defendant has prayed for rejection of application.

6] I have heard, Shri. S.M. Wasnik, advocate for the plaintiff and Shri. P.V. Patil for the defendants. Considering the rival contentions and upon hearing both the parties, following points arise for my consideration to which I record my findings for the reasons to follow :

POINTS FOR DETERMINATION**FINDINGS**

- | | |
|--|-----------------------------|
| (1) Can the amendment as prayed for, be allowed? | Yes. |
| (2) What order? | The application is allowed. |

REASONS**AS TO POINT No.1**

7] Learned advocate for the plaintiff argued the application as per his say. On the contrary, learned advocate for the defendant stressed that the plaintiff by seeking the present amendment is trying to wipe out the admissions made by him in the plaint. He submitted that cause title of the plaint clearly goes on to show that he plaintiff had admitted road has not been created. The plaintiff by the proposed amendments is trying to wipe out his admission that road was never created by seeking to insert portion that road was prepared as per the order of Dy. Collector, Amrawati, however, the same was never used. He submitted that plaintiff cannot be allowed to wipe out his admissions given in the proceedings. He further submitted that, this is a second round of litigation between the parties and the application is filed only with a view to protract the trial.

8] Heard both the parties. Perused the documents on record. Perusal of the application suggests that the plaintiff by way of amendment, has proposed to withdraw the statement that 'road was never created' and seeks to insert words 'the road created was never used' in the cause title of the plaint. Similar amendment is sought in

paragraph 4 of the plaint. It is clear from the perusal of the application that the amendment in the title cause would not change the nature of suit.

9] In my opinion, from the perusal of the plaint it does not transpire that there is a categorical admission on the part of plaintiff in relation to the existence of road, as the statement appears to have been made in relation to the creation of new road from the field of plaintiff. It is pertinent to note that, the issue involved in the matter is in respect of the causing obstruction to the field of plaintiff by the defendant by creating new road. Therefore, in the above background, withdrawal of statement by the plaintiff that 'road was never prepared' does not go to the root of the matter and as such cannot be said to change the nature of suit.

10] Similarly, the explanatory circumstances that led to filing of the present suit are sought to be brought on record by the plaintiff by seeking insertion of para 5A. Their submission of the plaintiff that there was an inadvertent error on his part of plaintiff, prima facie appears acceptable. The plaintiff, thus, is required to be granted an opportunity to bring on record all the relevant circumstances for the just decision of the case. As the trial is at initial stage and the issues are yet to be framed, I am of the opinion that no prejudice would be caused to the defendants if the permission to carry out amendment in the pleadings is granted to the plaintiff. This, I am of the opinion that the present application filed by the plaintiff deserves to be allowed.

11] The suit is of year 2016. No explanation is coming on record from the side of defendants as to why they failed to carry out amendment and what prevented them from bringing all the relevant material on record at the time of filing of the plaint. Due to non-diligence on the part of the defendants, the defendants have unnecessarily suffered. Therefore, the defendants are definitely entitled to get suitable costs which I assess at Rs.200/-each. Accordingly, I answer point No.1, in the affirmative and proceed to pass the following order:

ORDER

- 1] The application is allowed subject to costs of Rs. 200/- to be paid by the plaintiff to defendant on or before next date of hearing.
- 2] The plaintiff is directed to carry out amendment in the plaint as per the application, forthwith.

(Dictated and pronounced in open Court)

Sd/-

Dated:- 03/12/2019

(Rohit R. Pande),

Karanja.

Jt. Civil Judge, J.D. Karanja (Lad).

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 Stenographer : V. R. Gurawa (Stenographer Grade 3)

Court Name : Jt. Civil Judge (JD) & JMFC,
Karanja [Lad], Dist. Washim.

Date : 03/12/2019.

Order signed by the Presiding
Officer on : 03/12/2019.

Order uploaded on : 06/12/2019.