



RCS No. 34/2015
Shridhar vs. Suresh
CNR No. MHWS080004512015

ORDER BELOW EXH-46

Present application is moved by plaintiff under Order VI Rule 17 of the Civil Procedure Code. According to plaintiff, he has filed this suit for Permanent Injunction along with temporary injunction application. In four boundaries in Para no.01 of plaint on the Eastern Side Field of Latabai More, Western Side Field of Dnyaneshwar Late, North Side Field of Prakash More and Yuvraj Devhade, were wrongly typed. So instead of Field of Latabai More, the Field of Rambharati Yadavbharti and Instead of Field of Dnyaneshwar Late the Field of Prabhakar More and Instead of Field of Prakash More and Yuvraj Devhade the Field of Dnyaneshwar Late are required to be inserted in plaint.

02. According to plaintiff the above amendment is formal in nature and does not change the nature of the suit. This amendment is only explanatory to decide the matter correctly and for the fair adjudication of the trial the above amendment is necessary for which the permission is required.

03. On the other hand learned advocate for defendant opposed the application stating that by this amendment the nature of suit property will be changed. The plaintiff specifically mentioned four boundaries and filed suit in the year 2015. Since then the four boundaries are intact. Plaintiff also filed evidence. Now the amendment should not be carried out. The application is not as per rule and only filed to prolongue matter and liable to be rejected.

04. Heard both the sides, perused the record. It appears that the suit is filed on dated 08.06.2015. Defendant filed W.S. vide Exh.14 on dated 15.09.2015. Temporary Injunction application was seen and filed. On dated 05.02.2018. Issues were framed on dated 03.04.2019. plaintiff filed his evidence of affidavit vide Exh.26 on dated 21.03.2022. On dated 24.09.2022 defendant filed some documents vide Exh.29 on the same day plaintiff filed application for framing additional issues vide Exh.30. Accordingly additional issues was framed.

05. Then on dated 12.12.2022 defendant filed another application for framing additional issues. Which was allowed on dated 12.01.2023 and other additional issues in respect of limitation was framed. Then on dated 01.02.2023 application for change or recast additional issues was filed. Which was also allowed. Then on dated 19.06.2023 plaintiff filed some documents along with Certified copy of Registered Sale Deed no.278/2002. Then on dated 13.07.2023 the chief examination plaintiff was recorded. Then this application was filed on dated 20.02.2024.

06. The matter is more than five years old. Plaintiff stated that the alleged Sale Deed is only executed for the security of loan amount. So it is not binding on him as the ownership and possession is not transferred. On the contrary according to defendant the sale deed is valid and suit is barred by limitation. It also appears that though the evidence of plaintiff is filed on 21.03.2022 but then several interim applications delay the matter. Moreover, the copy of alleged sale deed is firstly filed on record by the defendant on dated

24.09.2022 vide list of document Exh.29. Then plaintiff filed certificate copy of it on dated 19.06.2023.

07. According to plaintiff he is changing the four boundaries as per the boundaries mentioned in the sale deed. According to him the sale deed is not in his possession. Record also reveals that though this suit is filed in the year 2015, the original sale deed filed on record on dated 24.09.2022. Certified copy of it filed on dated 19.06.2023. the evidence of plaintiff was filed on dated 21.03.2022. the chief examination was conducted on dated 13.07.2023. The cross-examination of plaintiff is yet to be conducted.

08. By this amendment plaintiff only wants to amend four boundaries in plaint. As per Order 6 Rule 17 of the Civil Procedure Code the party can amend his pleading at any stage before commencement of trial, if the proposed amendment do not change the nature of suit and is not prejudicial to another side and is necessary for just decision in the matter. Even if the trial begins then, if the situation is beyond control of the parties, they can seek amendment in their pleadings with the permission of court.

09. Perusal of record prima facie shows that the though the evidence of plaintiff is field on record but his cross-examination is yet to be conducted and other witness of plaintiff are yet to be examined. The defendant has a right to cross examined plaintiff on this point. Hence, it appears that the trial is yet to be commence in real sence. Moreover, both the parties filed and relied upon same sale deed. Plaintiff wants to amend four boundaries as per sale deed,

which is not in his possession. Prima facie it appears to be typographical mistake. So, considering the nature of suit and claim of plaintiff and W.S., the proposed amendment will not change the nature of suit and no prejudice would be caused to defendant. But heavy loss and great injustice will be caused to plaintiff. In my opinion the amendment is necessary to decide the real controversy and to avoid multiplicity of proceeding between the parties. Considering the inconvenience caused to the defendant it would be proper to imposed appropriate cost. Hence, I pass following order.

ORDER

1. Application is allowed subject to cost of Rs.500/- to be paid to defendant.
2. The plaintiff is directed to carried out proposed amendment within 14 days from the date of this order after
3. Both the parties are directed to speed up the matter.

Sd/-

(Yogesh D. Koinkar)
Civil Judge (J.D.), Risod

Date: 03.04.2024

CERTIFICATE

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

Name of the Stenographer : H. A. Uchade.

Name of court : C.J.J.D.& JMFC;Risod

Date : 03.04.2024

Judgment/Order signed by the
Presiding Officer : 03.04.2024

Judgment/Order uploaded on : 03.04.2024