

ORDER BELOW EXH.266

The present application is filed by defendants No.7 & 8 under Order VI Rule 17 of the Code of Civil Procedure and prayed for amendment in their pleading to insert relief of perpetual injunction.

2. Read the application. Also read the say filed on behalf of plaintiffs at Exh.267. Heard both advocates at length.

3. Defendants in their application claimed that, they have brought counter-claim as a legal representative of deceased defendant No.4 and, thereby, sought for declaration of ownership on the basis of registered Will of dated 24/10/2008, which was executed by defendant No.4. However, they pleaded in their counter-claim that, there is a likelihood of threat to their peaceful possession over the suit property by original plaintiff and his legal representatives. In this background, to avoid the multiplicity of proceeding, it is expedient in the interest of justice to incorporate prayer of a perpetual injunction. The plaintiffs have strongly objected the application on the ground of delay. Also they have submitted that, application is not maintainable as, it was filed at the belated stage of judgment. Also, delay is not explained by the defendants. The application filed by the defendants of Exh.152 for temporary injunction application was rejected as they failed to establish their possession over the suit property. Lastly, they prayed for rejection of application.

4. Perused the record. On perusal of record, it appears that, evidence of both the parties is concluded and argument of both the parties has been heard. Admittedly, after concluding argument of both the sides, matter was listed for submitting citations. At this stage, the present application is brought by the defendant No.7 & 8 to incorporate relief of perpetual injunction on the basis of alleged Will of dated 24/10/2008 which was executed by deceased defendant No.4. Admittedly, record shows that, initially, defendant No.7 & 8 have filed joint written statement alongwith defendant No.4 at Exh.39. In the said written statement, the defendants have claimed that, defendant No.4 was and is in the possession of the suit property. Thereafter, after demise of defendant No.4, the defendant No.7 & 8 have brought their counter-claim at Exh.159 on the basis of alleged Will. Admittedly, in the said counter claim, they have only sought for the relief of declaration that, they are the owners and the possessors of the suit property on the basis of Will of dated 14/10/2008. The said counter-claim was strongly resisted by the plaintiff by filing his written statement at Exh.162.

5. Furthermore, on perusal of record, it appears that, after filing of the counter-claim and written statement to it by the original plaintiff, additional issues were framed on 08/11/2019. Since then, suit is listed for hearing. However, record shows that, both the parties have adduced their evidence and after availing full opportunity of their evidence, both the parties have closed their evidence. Thereafter, respective advocates of both the parties have submitted their argument at length. Thereafter, on the query posed

by the court at the time argument, the defendant No.7 & 8 have brought present application to incorporate relief of perpetual injunction.

6. It is matter of the fact that, trial is concluded in the present suit, on the hearing of argument on behalf of both sides. Now, defendant No.7 & 8 wants to amend their relief clause by inserting relief of perpetual injunction. In fact, on going through their counter claim and evidence adduced by them, it appears that, they have not given any specific cause of action about the alleged threat to their alleged possession over the suit property. It is matter of the fact that, the defendants have sought for relief of declaration that, they become owner and possessor of the suit property by virtue of alleged Will executed by defendant No.4 in their favour. The legality of Will and their ownership over the suit property has to be decided on the basis of evidence adduced by both the parties. Though, the defendant No.7 & 8 have claimed that, they have possession over the suit property, they have failed to give plausible explanation as to why they have not sought for relief of perpetual injunction at the time of filing of counter-claim by them. Also, they have not given any specific cause of action in their counter-claim about their alleged possession and alleged threat claimed by them in the present application.

7. Learned Advocate Shri. O. R. Deshpande submitted that, the relief of perpetual injunction can be sought at any time as it has a continue cause of action. He also submitted that, the defendants have get the possession of suit property on the death of

defendant No.4 itself. Though, the defendants have not sought for relief of perpetual injunction and they have omitted it at the time of filing of counter-claim, it can be necessary for them to sought for said relief to avoid the multiplicity of the proceeding. Already, they have sought for relief of declaration but to avoid the technicality and to decide all the dispute in one suit, they be permitted to amend their prayer clause for relief of perpetual injunction. In support of his argument, he placed reliance on ***Life Insurance Corporation of India Vs Sanjeev Builders Pvt. Ltd. And another, 2022 SCC Online SC 1128.***

8. Per contra, learned Adv. Shri K. G. Mutyalwar for plaintiffs submitted that, the application is filed by the defendants is afterthought and it was filed only with intent to cure the lacuna in their counter claim. Admittedly, argument of both sides is over and stage of commencement of hearing is concluded. The defendants have also failed to show their due diligence, as to why they have not brought present application prior to concluding their evidence and argument. The application is filed at belated stage and if, present application is allowed, it will change the nature of the suit and cause injustice to the plaintiffs.

9. In the present matter in hand, admittedly, the defendants have brought their counter-claim on 10/08/2018. On the basis of said counter-claim, they have adduced their evidence. However, their application for amendment of title clause of the counter-claim in view of the provisions of Order VIII Rule 6A to 6G of Code of Civil Procedure was allowed on 04/07/2025 and they

have carried out said amendment. At that time, also they have not sought for proposed amendment in their counter-claim. However, as discussed above, their counter-claim does not show cause of action in regard to their possession over the suit property. Admittedly, the defendants have omitted the relief of perpetual injunction without the leave of the court at the time of filing of their counter-claim. In such circumstances, their application is itself hit by the provisions of Order II Rule 2(2) and 3 of Code of Civil Procedure. However, the defendants have failed to give any plausible explanation about the delay of more than 8 years to sought for the proposed amendment. There is no specific cause of action mentioned in the present application, which will permit the defendants to sought for relief of perpetual injunction about alleged threat. For that reason and the facts of the present matter are totally different than the facts of the matter of the above mentioned supra, the ratio laid down in above supra is not helpful to the defendant.

10. In view of above discussion, it appears that, the application brought by the defendants at belated stage, after concluding argument of both the parties is not maintainable. The application is hit by the provisions of Order II Rule 2 of Code of Civil Procedure and also, hit by the proviso of Order VI Rule 17 of the Code of Civil Procedure. The application is nothing but an attempt to cure the lacuna appears on the face of record in the counter claim about the omission of relief of permanent injunction. For that reason, the application is not maintainable at this stage.

The application is devoid of merit and deserves to be rejected.
Hence, the following order.

ORDER

- (1) Application is hereby rejected with cost.
- (2) Cost in final cause.

Date : 13/03/2026.
Place : Kelapur.

(**K. K. Mane**)
Civil Judge (S.D.),
Kelapur, Dist. Yawatmal.