

ORDER BELOW EXH.80

(Dated : 21-09-2019)

The present application filed by plaintiff for amendment under Order VI Rule 17 of The Code of Civil Procedure (refereed in short as CPC).

02. It is submitted by the plaintiff that defendant no. 4 i.e. Western Coalfield Limited was added in the present suit dated 10-10-2018. The plaintiff prayed for declaration against will deed No. 27/2006 dated 06-10-2006, sale deed No. 471/2006 and sale deed No. 472/2006 dated 18-02-2006 and 12-09-2009 respectively to be declare as null and void. Similarly plaintiff prayed for enquiry of mesne profit and perpetual injunction in respect of agriculture field property gut no. 98, class 1 land, admeasuring 4.45 H.R. situated at Mauza Bramhani Tq. Wani Dist. Yavatmal. Thus by addition of defendant no. 4 specific pleading required to be made in the plaint and prayed against them. The proposed amendment by adding para no. 6 B after para no. 6A in the plaint. While perusing the amendment paragraph stated in this application wanted to add by way of amendment. It is nothing but compensation amount of Rs. 23,72,160/- is still outstanding on account of compensation from defendant no. 4. The said amount is not recovered so far from defendant no. 4. The plaintiff will deprived if her legal heirs to receive the benefit out of said acquisition. It is also prayed that in regards to above amendment that order should be given to defendant no. 4 that not to released the amount. It be ordered that not to release the residual amount of compensation to defendant no. 2 and 3 under the decree of prohibitory injunction till the decision of this suit and with further direction to make the payment of compensation amount to the extent of share of plaintiff in the residual amount of compensation as against defendant no. 4 under the decree of mandatory injunction.

03. He vehemently submitted that application is filed for grant of

legitimate claim. That fact that needs to be brought on record. This application would not change the nature of the suit nor prejudice defendants in the matter. Hence prayed for allowing the application in the interest of justice.

04. Defendant no. 2 as filed his say on the instant application saying that by notification the said land was acquired for mining project by Western Coalfield Limited. As per award passed by competent authority and as per Grampanchayat and TILR record the defendant is the owner of the suit land. The compensation amount distributed to the rightful owner of the aforesaid land. Hence after compensation amount distributed on 12-06-2018 to the land owner. Plaintiff has not any right to amend the plaint. Hence plaintiff has no any right to seek the directions from the court to deposit the amount. Plaintiff only to harass the defendant want to amend the plaint. Proposed amendment change the cause of action of suit as well as the nature of the suit. Proposed amendment bars the jurisdiction of the court. Hence application be rejected with costs

05. Defendant no. 3 filed his say and submitted that the defendant no. 4 has acquired the suit land under the scheme of Coal Baring Act. Any dispute regarding compensation of the amount of acquiring land would be decided by the tribunal. Hence this court has no jurisdiction to dispute regarding the compensation above acquiring land. If the said application is allowed the nature of suit is totally change. Hence the said application may kindly be rejected by imposing heavy cost.

06. The application is preferred to show subsequent development happened after instituting of suit. It is submitted by this application that defendant no. 4 has acquired agriculture land situated at mauza Brahmani which is subject matter of the suit. The defendant no. 1 and 2 are the legal representative of defendant no. 1 the defendant 2 and 3 have received

part compensation amount from defendant no. 4 the information received by plaintiff that and amount of Rs. 23,72,160/- is still outstanding. The same is not recovered from defendant no.4 by defendant 2 and 3 the amount paid by defendant no. 4 to defendant 2 and 3 to the extend share of plaintiff is liable to be recovered from these defendant 2 and 3. If an amount mentioned above is received above defendant then plaintiff is deprived if her legal right to received the benefits arising out of said acquisition. Therefore he prayed that, it be order that not to released residual amount of compensation to defendant no. 2 and 3 by defendant no. 4 under the decree of prohibitory injunction till the decision of suit and with further direction to make the payment of compensation amount to the extent of share of the plaintiff in the residual amount of compensation as against the defendant no. 4 under the decree of mandatory injunction.

07. The present matter is in progress the issues are yet to be frame. This an application to show that the amount likely to disburse to the defendant no. 2 and 3. That amount is a compensation amount extent of the share of plaintiff. In the present case will deed dated 06-10-2005 is in challenge before this court. The said will deed is null and void against the plaintiff is a matter of merit will be decide after adducing evidence of parties and will be decided at the time of judgment. At this stage it is not just and proper to look in to the validity of the will deed.

08. The application is for amendment preferred under apprehension of receiving an amount by defendant no. 2 and 3. if the amount remains with defendant no. 4 is released in favour of defendant no. 2 and 3 then the valuable right of plaintiff will be washed out. In order to avoid the said thing plaintiff wanted prohibitory injunction as well as mandatory injunction from this court against defendant no. 4. I am of the opinion that defendant no. 4 is a proper party and he may not

concern with the affairs between the parties whatever may be. They only to disburse an amount to the parties as directed by this court. They have added in the present suit as they are acquisition body. Except this there is no big role to play in this matter. The objection given by defendant no. 2 and 3 is that the jurisdiction of this court. Because land is vested to the western Coalfield limited therefore as per coal bearing act the jurisdiction lies with Coal Tribunal. Therefore this court has no power to passed any order when matter is vested with tribunal. Defendant no. 2 is taken stand that as per award passed by competent authority and as per Grampanchayat and TILR record the defendant is owner of said land. The compensation amount distributed on 12-06-2018 to the land owner. So plaintiff has no right to amend the plait similarly he has no right to claim any relief or direction from this court. The plaintiff wanted to harass to defendants. The proposed amendment will change the nature of suit.

09. I have noted the objection raised by defendants. The present matter is in initial stage. The evidence of parties yet to be start. Therefore there is no problem to this court to consider each application preferred by either plaintiff or defendants. The application would be proper to decide on the basis of facts and circumstance present before this court by either parties. At the time of deciding application like amendment court should adopt liberal approach by giving reason in order to avoid multiplicity of proceeding between the parties. If this court curtails the liberty or submission made by plaintiff in the present application then valuable right of plaintiff will go in vain. Whatever amendment wanted to carried out it is chance to the defendants to make counter amendment or consequential amendment against the said amendment and that can be read in evidence.

10. The purposed of amendment is restricted only after evidence is proceed or trial begins but there is condition if by due diligence of the parties filling said application by raising suitable, just and genuine reason

the it can permit at the time of judgment also. The parties should not deprive his right at the initial stage. By considering objection by the parties over this application is take in to consideration by this court. But at this stage I am of the opinion that there is no hesitation to grant the application. As far as jurisdiction of this court is concern of the ground of acquisition by defendant no. 4 and matter is pending before tribunal is not ground to not touch the aspect this application. Because the suit is for declaration therefore this court has every right to decided the said application. Because the jurisdiction of this court is not ousted by any law. The jurisdiction of tribunal is limited only to the extent of determining the compensation amount and not decide any civil dispute between the parties. That subject matter is lies with this court. Therefore objection of defendant no. 3 is not tenable. Similarly objection of defendant no. 2 can not take in to consideration at this stage because major portion required to decide after adducing or leading evidence by parties.

11. The application is not decided any matter. It is only filed for protect the interest of plaintiff. If plaintiff is not succeed in the suit as per their averments as per stated in the present application. Then there is no harm cost to be defendant but they have to wait till decide the matter an merit. Hence not going in to merit of the matter at this stage application deserves to allowed and plaintiff is liberty to amendment in the plaint. Hence I proceed to pass following order.

ORDER

1. The application stand allowed.
2. The plaintiff is directed to carry out the proposed amendment with 14 days from today.
3. No order as to costs.

Date : 21-09-2019

(R. R. Khamatkar)
2nd Jt. Civil Judge (Jr.Dn.),
Wani, Dist. Yavatmal