

(1982) 12 GUJ CK 0035

Gujarat High Court

Case No: None

Bai Mirat and Another

APPELLANT

Vs

Vyas Prahladi

RESPONDENT

Mohanlal and Another

Date of Decision: Dec. 14, 1982

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 2 Rule 2, Order 2 Rule 2

Citation: (1983) 1 GLR 528

Hon'ble Judges: A.S. Qureshi, J

Bench: Single Bench

Judgement

A.S. Qureshi, J.

In this revision application, the petitioners are challenging the order dated 13th September 1982 passed by the learned Civil Judge (J.D.), Vijapur, rejecting the amendment application of the petitioners.

2. The amendment to the plaint sought by the present petitioners consisted of adding defendants Nos. 3 and 4 whose names and addresses are given in the application and who are said to have purchased the suit fields, according to the plaintiffs, they came to know about the fact of the suit fields having been sold to the two persons who are sought to be joined as defendants Nos. 3 and 4 from the written statement filed by defendant No. 1. In the said amendment application, some portion of the plaint was also sought to be amended; so also the prayer clause was proposed to be amended as a consequential relief.

3. Mr. Soparkar, the learned Counsel for the petitioners, has submitted that the amendment sought has become necessary in view of the averments made in the written statement that the suit fields have been transferred to the two persons who are now sought to be joined as defendants Nos. 3 and 4. Mr. Soparkar has also urged that the nature of the suit cannot be said to have been changed by bringing

in the plea that the plaintiffs be handed over possession of the suit fields, although, originally, the contention was that the plaintiffs were in possession of the suit fields and an injunction was sought restraining the defendants from interfering with the plaintiffs' possession and enjoyment of the suit fields. Mr. Soparkar has urged that the original contention of the plaintiffs being in possession of the suit fields was based on the fact that the plaintiffs and defendant No. 1 were in joint possession of the suit fields and hence the plaintiffs could be said to be as much in possession of the suit fields as the defendant No. 1. According to him, now that it has been brought on record that the defendant No. 1 has transferred possession of the suit fields to the persons who are sought to be impleaded as defendants Nos. 3 and 4, the plaintiffs had no option but to ask the relief of obtaining possession of the suit fields from either of the defendants who may be ultimately found to be in possession thereof.

4. Mr. C.V. Jani, the learned Counsel for the opponents, has submitted that the proposed amendment, if allowed, would change the nature of the suit and that the application is not bona fide. Hence, it should be rejected. Mr. Jani has relied on the decision in the case of [Modi Spinning and Weaving Mills Co. Ltd. and Another Vs. Ladha Ram and Co.](#), to show that if the amendment changes the nature of suit, the amendment should not be allowed. In the present case, it cannot be said that by amending the plaint and asking for the possession of the suit fields, the nature of the suit would change. The plaintiffs could have originally sought for the alternative pleas by saying that if the trial Court finds that the plaintiffs are not in possession of the suit fields, they may be awarded possession. If such alternative plea can be put forward in the plaint originally, there is no reason why such plea cannot be allowed to be brought in by way of amendment of the plaint. Moreover, there is also the possibility that if the plaintiffs do not ask for the relief of possession of the suit fields in the present suit, then, subsequent suit for possession may be disallowed under Order 2, Rule 2 of the CPC if they fail to ask for that relief which they can get in the present suit. The amendment application so far as it seeks joining the two alleged purchasers as defendants Nos. 3 and 4 would be necessary as they are the persons who are bound to be affected by the Court's decision in this suit and that the decree of possession may have to be executed against them. Therefore, they are not only proper but also necessary parties in this suit.

5. In the circumstances of the case, it has to be held that the impugned order of the learned trial Judge is erroneous and the same is hereby set aside. The amendment as set out in the application is allowed and the suit will proceed when the amendment is duly carried out. The suit is directed to be taken up immediately and be disposed of on or before 31st March, 1983. In the circumstances of the case, there will be no order as to costs.

Rule made absolute with no order as to costs.