

SPCS/368/2011

ORDER

Registration No.: SPCS/368/2011

Filing No.: SPCS/368/2011

Filed On: 20/12/2005

Registered On : 20/12/2005

IN THE CIVIL COURT AT SURAT

SPECIAL CIVIL SUIT NO. 368 OF 2011.

Plaintiff:

1. DR. BABULAL MOTICHAND SHAH
PATEL FALIYA, NANA VARACHHA, SURAT
SURAT

VERSUS

Defendant:

1. COMMISSIONER
MUGLISARA, SURAT
SURAT
& Others

Appearance:

N.R.MODI For Plaintiff 1

J.N.MEVAWALA For Defendant 1, 2

ORDER

SPECIAL CIVIL SUIT NO. 368 OF 2011

ORDER BELOW EXHIBIT – 38.

[1] Heard, read the present application and reply filed by the defendant vide Exh.41. The present application has been filed

by the plaintiff under Order-6 Rule-17 to amend the plaint. The short fact of the present application is that the Court has pleased to allow the amendment application of Exh.20 on dated 21/4/2012 and plaintiff has amended the Para 10/A and 10/B of plaint and in the present application, plaintiff wants to amend the prayer Para that "Honourable Court may please to hold that the plaintiff is entitled to compensation of the lost of Rs. 20,00,000/- suffered by unjust, ultravires, arbitrary and illegal demolition of the building and the structure of the plaintiff's Dispensary, the suit property and also the accumulated lost of income and may further be pleased to order to draw the decree accordingly.

[2] The learned advocate for the defendant filed their reply vide Exh.41 and strongly objected the present application and contended that earlier the Court has already granted the amendment application at Exh.20, plaintiff has not shown the sufficient reason to re-amend the plaint. If the present application is allowed, it will change the status of the present suit. The present suit is infructuous one because the premises is already demolished. So the present application must be rejected with costs.

[3] I have heard the learned advocate for the plaintiff Mr. N.R. Modi and learned advocate for the defendant Mr. J.N.

Mevawala Looking to the record of the present suit, plaintiff has filed an amendment application vide Exh.20 on dated 2/3/2010 to amend the plaint and my Learned Predecessor has ordered to grant that application on dated 21/4/2011, plaintiff has amended the plaint accordingly and order to add the Para-10/A and 10/B and also add the prayer Para. My Learned Predecessor has framed the issue vide Exh.15 on dated 5/4/2012. Looking to the Provision of Order-6 Rule-17 of C.P.C., the Court may at any stage of the proceedings allow either party to alter and amend his pleadings in such manner and on such terms as may be just, and all such amendment shall be made as may be necessary for the determining the real question in controversy between the party.

[4] Provided that no application for amendment shall be allowed after the trial as commenced, unless the Court comes to the conclusion that inspite of due diligence to party could not have raise the matter before the commencement of trial.

[5] Looking to the above Provision of C.P.C., in the present suit, issues have been already framed and the present suit is on the stage of evidence of plaintiff. So the trial has already commenced and the plaintiff has already moved the amendment application vide Exh.20 and the remedy which is asked by the present plaintiff in this application is granted to add the Para 10/B

in the plaint. So as per the Provision of Order-6 Rule-17 and as per my above discussion, I pass the following order.

∴ ORDER ∴

The present application is hereby rejected.

No order as to costs.

Pronounced in open Court to-day on 18th day of the Month of April, 2014 at Surat.

Surat.

Date : 18/04/2014.

[A.M.MEMON]
12th Addl. Sr. Civil Judge,
Surat.
(GJ 00674)