

**ORDER BELOW APPLICATION EXH. 168**  
**MHAH140027932016**

The plaintiff filed this application under Order VI, Rule 17 of the Code of Civil Procedure.

2. It is contended by the plaintiff that, she has filed this suit for the declaration and perpetual injunction. The defendants have submitted their written statement. The trial is not yet commenced. It is further contended that on 11/01/2018 rectification deed in respect of description of the suit land has been executed in favour of the plaintiff by the erstwhile owner. The suit land block No. 95/3 has been converted into block No. 95/1. Therefore, by way of proposed amendment the plaintiff wants to amend the description of the suit land. It is contended that the proposed amendment is necessary for just decision of the case. Hence, she prayed for allowing her to carry out the proposed amendment.

3. Defendant No's. 2, 4, 5 and 6 have failed to file their say to the application.

4. Defendant No. 3 opposed the application by filing his say (Exh.77). He denied all the contents of the application. It is contended that this defendant has taken defence of incorrect description of the suit land. The sale deed dated 06/09/2010 is illegal and wrong. The plaintiff on 11/01/2018 to fill up the lacuna has got the rectification deed executed. It is further contended that the proposed amendment will change the nature of the suit. On these grounds defendant No. 3 prayed for rejecting the application.

5. Heard the learned counsel for the plaintiff and defendant No.  
3.

6. The plaintiff has filed this suit for declaration and perpetual injunction. The plaintiff has produced copy of index II (Exh.188), of the rectification deed dated 11/01/2018.

7. The learned counsel for defendant No. 3 argued that the proposed amendment will change the nature of the suit. Further the plaintiff was having knowledge about the description of the suit property before filing of the suit. Therefore, now the proposed amendment cannot be allowed. The learned counsel in support of his argument has placed his reliance in the case of *Mashyak Grihnirman Sahakari Sanstha Maryadit Vs. Usman Habib Dhuka & Ors., reported in AIR 2013 SC 3188*, wherein the Hon'ble Supreme Court pleased to hold that -

“Civil procedure Code, 1908, Order 6 Rule 17 — Amendment of Plaint — Main ground of seeking relief is that the plaintiff-respondent Nos. 1 to 3 were allegedly not aware of the conveyance deed dated 08/02/1999 — Prime facie the aforesaid is not correct — Before the institution of the suit in the year 2010 the plaintiffs allegedly came to know about the Conveyance Deed dated 8<sup>th</sup> February, 1989 sometime in the year 2009 but relief was not sought for in the plaint which was filed much later — No ground for allowing the amendment sought for by the plaintiffs which was not only belated one but was clearly after thought for the obvious purpose to avert the

inevitable consequences — Impugned order passed by the High Court allowing amendment of plaint liable to be set aside.”

8. I have gone through the above ruling of the Hon'ble Supreme Court. In the present suit the rectification deed was executed on 11/01/2018. The suit is filed in year 2012. Hence, it is clear that said rectification deed was executed after filing of the suit. In such circumstances defendant No. 3 cannot take help of the said ruling.

9. Admittedly, trial is not yet commenced. Therefore, the court has to take liberal approach while considering the application for the amendment. The proposed amendment is in respect of correction of the description of the suit land on the basis of rectification deed dated 11/01/2018. To determine the real controversy between the parties the proposed amendment is necessary. Hence, in the interest of justice, I pass the following order -

**-: ORDER :-**

1. The application is allowed subject to cost of Rs. 500/- be paid to defendant No. 3 on or before 26/04/2021.
2. The plaintiff shall carry out the proposed amendment on or before 26/04/2021 and submit amended copy of the plaint.

**Date : 26.03.2021**

**(Smt. S. D. Soni)**  
Jt. Civil Judge, S.D.  
**N e w a s a**