

RCS No. 80/2013.

Omprakash .Vrs. Shubham.

**Order Below Exh. 18.**

(Passed on 16/02/2016.)

01] The plaintiff filed the application for amendment of plaint under order 6 rule 17 of the Code of Civil Procedure.

02] It is the contention of plaintiff that the suit for mandatory injunction filed against the defendants. The defendant no.2 Rahul Ingle is the father of defendant no.1. At the time of transaction, the defendant no.1 is minor, therefore the defendant no.2 made a transaction on behalf of defendant no.1 with plaintiff for consideration of Rs.70,000/-per acre to sell the suit property on 21/09/2011. The defendant has filed the proceeding before the Hon'ble District Judge, Akola to grant the permission to sell the property of minor Shubham. The Hon'ble District Court allowed the application and grant the permission to sell the one acre portion of agricultural land bearing gat no.147 to Omprakash Ratanlal Sharma for the Rs. 70,000/- and also directed that the said amount be deposited in the bank. According to the said order, the plaintiff has deposited the said amount on 29/11/2011 in the Panjab National Bank. Then after, the defendant no.2 applied before the S.D.O., Balapur for grant the permission to sell the suit property due to the fragmentation. The defendant no.2 is avoiding to execute the sale deed in favour of plaintiff after receiving the aggrieved amount. Hence, the plaintiff prayed for amendment by adding the head 'suit for specific performance of contract', in the title clause and Rs.70,000/- in the valuation clause. The plaintiff also wants to add clause A(1) by the amendment of plaint. The plaintiff contended that the said amendment is bonafide and formal one. It will not change the nature of suit and relief. Hence, he prayed that the application is deserves to be allowed.

03] The defendant no. 2 has not filed his reply. The Ld. Counsel for the defendant no.2 did not appear before the Court for the hearing.

04] Heard the Ld. Counsel for the plaintiff. Perused the application and record. The plaintiff has filed the suit for mandatory injunction and prayed that directing to the defendant to execute the sale deed in favour of plaintiff and also handover the possession of suit property.

05] It is pertinent to note here that in **Shaikh Eliyas .Vrs. Ganpat Shirsat, reported in 2016(1) MhLJ 124**, the Hon'ble Bombay High Court held that the amendment application deserve the liberal approach. Pleadings in suit are aim at seeking and securing specific performance of transaction entered into between parties by preventing any third party interest. The averment in plaint did not make some explicit by claiming relief of specific performance by instituting a suit for injunction, plaintiff was not going to be benefited. Therefore, the application for amendment seeking specific performance of agreement of sale is allowed.

06] The plaintiff has filed the suit for mandatory injunction and prayed that directing to the defendant to execute the sale deed in favour of plaintiff and also handover the possession of suit property. The defendant has avoided to execute the sale deed in favour of plaintiff. So, without claiming specific performance of contract, he filed the suit for mandatory injunction and claim the same relief. But, the mode of execution of decree of mandatory injunction and specific performance of contract is different. The suit is proceeded exparte against defendant no.1 and without W.S. against defendant no.2.

07] It is pertinent to note here that plaintiff was not going to benefited in the ultimate object of acquiring suit property by instituting a suit simplicitor for mandatory injunction. The defendant no.2 has obtained the permission to sell the suit

property on behalf of the minor defendant no.1 to plaintiff from Hon'ble District Court. Even though, the defendant no.2 has avoided to execute the sale deed and filed the application for permission to sell suit property to the plaintiff before S.D.O., due to fragmentation.

08] It is pertinent to note here that the amendment is necessary for determining the real question in controversy between the parties. The plaintiff has not introduced the new case. The cause of action is also the same. The trial is yet to be commenced as per the application, amendment does not cause injustice or prejudice to the defendants. At this stage, there is no need to go into the correctness or falsity of the case in the amendment. If the application is rejected the plaintiff will file the separate suit for the same relief and there is a chance of multiplicity of suits, which can be avoided by allowing this application. On the perusal of application and pleading it appears that the plaintiff has not acting with malafide intention. The plaintiff can pray this relief in the present suit but he has not prayed for this therefore this act can be considered by imposing costs on him. Therefore, I am of the opinion that the application deserves to be allowed. Hence, I pass following order.

### **Order**

- (1) The application is allowed.
- (2) The plaintiff is hereby directed to amend the plaint as mentioned in the application and file the amended copy of plaint on record within stipulated period.
- (3) The plaintiff shall pay Court Fees according to the relief in the amendment.

Sd/-

**(B.M. Kale)**

Civil Judge (J.D.) Balapur.

## Certificate

I affirm that the contents of this P.D.F. file are same word for word as per original order.

Name of Steno : S.V. Indane.  
Court Name : C.J.J.D. & J.M.F.C., Balapur.  
Date : 16/02/2016.  
Signed by Presiding  
Officer on : 16/02/2016.  
Uploaded on : 26/02/2016.

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