

**Order passed below Exh. 1 in R.C.S. No. 308/2001**  
**Gorakhnath Vs M.C. Gangadhar & another**  
**(CNR No. : MHAU07-000162-2001)**

01. Initially plaintiff has filed this suit against the defendants and thereby prayed for perpetual injunction to restrain the defendants from interfering and obstructing his peaceful possession over the suit shop known as 'Gala' situated quite adjacent to Z.P. High School, next to Shiv Sena Office on western side of office, constructed by defendant No. 1 and to direct the defendant No. 1 to issue allotment letter in the name of the plaintiff in respect of above shop and for recovery of vacant possession of shop/Gala.

02. Defendant Nos. 1 and 2 appeared and filed their written statement. On going through file, it further transpires that plaintiff has filed an amendment application below Exh. 67 and thereby contended that after filing of suit, defendants in collusion with each other completed construction illegally and behind back of plaintiff and defendant No. 1 handed over Suit Gala to the defendant No. 2. Thus, plaintiff wants to amend plaint and to seek recovery of vacant possession and wants to add pleading accordingly in paragraph Nos. 7-A and 7-B and wants to add prayer B-1 as to recovery of possession. It further transpires that my predecessor was pleased to allow said application by passing order dated 16.07.2010 below Exh. 67. It further transpires that plaintiff amended the plaint accordingly and filed amended plaint below Exh. 82.

03. On going through file, it is evident that my predecessor framed issues below Exh. 53 on 19.07.2008. Therefore, issues

framed by my predecessor are earlier to the amendment of plaint below Exh. 67. Thereafter, it transpires that neither plaintiff nor defendants sought / filed any application for re-caste of issues or framing of additional issues. In view of subsequent amendment to the plaint vide Exh. 67, issues which were frame below Exh. 53 are in respect of title of the plaintiff, possession of plaintiff, obstruction of defendants and whether the plaintiff is entitled for injunction. These issues are ho longer required in view of subsequent amendment to the plaint as per Exh. 67.

04. It is case of plaintiff that already possession of Suit Gala has been handed over by defendant No. 1 to defendant No. 2. It is further his case that plaintiff was in possession of certain plot. Defendant No. 1 then floated a scheme and thereby encroacher who will hand over possession of of their encroached land will be having preferential right in the scheme in commercial building which will be constructed by defendant No. 1 and accordingly plaintiff has handed over encroached land to defendant No. 1 and also paid earnest amount / security deposit as per terms and conditions of defendant No. 1. Therefore, in view of pleading in the plaint and written statement and in view of subsequent amendment to the plaint, issues which are framed below Exh. 53 does not survive and issues needs to be re-casted.

05. No doubt present suit is posted for argument of parties. However, as per Order XIV Rule 5 of the Code of Civil Procedure, Court can amend and / or strike out issues or may frame additional issues on such terms as it thinks fit at any time before passing a

decree. Therefore, in the instant case in view of the above discussion, following issues are required to be framed ;

- 1) Whether the plaintiff proves that he has preferential right to get allotment letter of the Suit Gala ?
- 2) Whether the plaintiff proves that he is entitled for vacant possession of the Suit Gala ?
- 3) Alternatively whether the plaintiff proves that he is entitled to refund of earnest amount / security deposit of Rs. 18,000/- along with interest from the date of receipt of amount by the defendant No. 1 ?
- 4) Whether the plaintiff is entitled for reliefs as claimed ?
- 5) What order and decree ?

Hence, I pass the following order.

### **ORDER**

- 1) All the issues framed below Exh. 53 be deleted and in place of it, issues as framed above be inserted.
- 2) Parties to lead their evidence, if any on next date without fail.
- 3) As suit is more than 15 years old, parties are directed to cooperate for expeditious disposal of the suit.

Date :- 18<sup>th</sup> April, 2018.

Sd/-  
(Ajay A. Bhatewara)  
Civil Judge (Junior Division),  
Gangapur

**CERTIFICATE**

I affirm that the contents of this P.D.F. file Order are same, word to word, as per the original Order.

Name of the Stenographer	:	Akshay R. Kulkarni.
Court	:	Civil Judge (J.D.), Gangapur.
Order Date	:	18.04.2018.
Order signed by the Presiding Officer on	:	18.04.2018.
Order uploaded on	:	18.04.2018.