

MHAU110003432021



ORDER BELOW EXH.24

Present suit is filed for declaration, possession, mandatory injunction against defendants. The plaintiff filed present application to amend the suit.

2. The plaintiff stated therein, during pendency of suit, defendant no.1 has started construction on the disputed land. hence, plaintiff filed this application to get mandatory injunction in order to prevent further construction by defendants. However, that application came to be allowed. Thereafter, matter was kept for issues. Meanwhile, he filed present application to add prayer of mandatory injunction in his main clause which remained.

3. Against this, advocate for defendants gave reply stating that present matter is for framing of issues. This Court has already allowed amendment application of the plaintiff as well as plaintiff carried out amendment. Thereafter, again present application is filed to prolong the proceeding. Further, question of res-judicata have arise now therefore, present application is not maintainable as the plaintiff cannot file same application for same purpose. Hence, this application to be rejected.

4. Heard both parties. Perused application and say alongwith material available on record. Gone through material on record. In this matter, earlier amendment sought by advocate for plaintiff for addition of mandatory relief. However, said application came to be allowed. Thereafter matter was pending for issues. Meanwhile, advocate for plaintiff filed application for seeking amendment as to add prayer of mandatory injunction in to his prayer clause. As it remained to amend prayer clause to that effect which was mistake on the part of advocate of plaintiff. If this application is granted, there will not be any loss to defendant. However, if not granted, the plaintiff will suffer loss and it will lead to multiplicity of proceedings.

5. In answer to argument raised of bar of Res judicata, it can be seen from the record that earlier application of amendment was praying to add relief of mandatory

injunction which came to be granted on merit. However, this application of amendment is not for same purpose, as purpose was mainly to add contentions or facts with regard to mandatory injunction which is already allowed. Present application is filed to amend the prayer clause of plaint as to accommodate relief of mandatory injunction which is already granted by the Court. Therefore, purpose of this application is cannot be said as same to have bar of Res judicata. If present application is allowed, yet issues have to be framed and trial to take place therefore, both the parties will have opportunity to lead their evidence in their support. But, if application is not allowed, then earlier order of allowing mandatory injunction will not be effectively applied as prayer clause remained to include the prayer of mandatory injunction. Moreover, considering nature of amendment sought does not change nature of suit or adversely affects defendants as at the time of trial, all parties will have opportunity to lead their evidence.

6. Hon'ble High Court has mentioned in catena of judgments that amendment can be sought by either parties may it be plaintiff or defendant so also at the time of deciding amendment application, liberal approach should be taken. Considering aforesaid I do not see any hurdle to grant aforesaid application as it is necessary to arrive at decision in real controversy in the suit as required under order VI, rule 17 of the Code of Civil Procedure, 1908. Although, due to plaintiff said trial delayed, to compensate the same, application is allowed subject to cost of Rs.1,000/- to pay to defendants by the plaintiff and I passed the following order.

: ORDER :

1. Application is allowed with cost of Rs.1000/- to pay to defendants by the plaintiff.
2. Plaintiffs are directed to carry out amendment within 14 days from today, failing to amend the plaint, this order shall be taken back as never passed.

Date: 19/10/2023

**(V.V. Raojadeja)
Civil Judge Junior Division
Phulambri.**

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 :- Shri. Yuvraj Bhagwansing Mirdhe
Court :- CJJD & JMFC Phulambri.
Date :- 19.10.2023
Order signed by the Presiding
Officer on :- 19.10.2023
Order uploaded on :- 04.11.2023