

ORDER BELOW EXH. 16

[Passed on 23.01.2025]

1. This is an application filed by the plaintiff under order 6 rule 17 R/w. Sec. 151 of C.P.C. to amend the plaint. Perused the application and say filed by the Ld. Counsel for the defendant. Heard Ld. Counsel for the plaintiff and Ld. Counsel for the defendants.

2. It is the contention of the plaintiff that he has filed the present suit for declaration and injunction on the basis of will deed dated 07.08.2019. Inadvertently he has not mentioned the relief of declaration in the prayer clause. Therefore, he wants to amend the plaint by inserting the prayer clause A-1 which is as under:-

“It be declare that defendants have no right title or interest over the suit property and further it be declare that the will deed which was notarized on 07.08.2019 is binding on the defendant as it is the last wish of their father.”

3. The plaintiff further submitted that the proposed amendment is formal in nature and will not change the nature of the suit. No prejudice would be caused to the defendants if proposed amendment is allowed. Hence, Ld. Counsel for the plaintiff prayed for allowing the application.

4. Ld. Counsel for the defendant No. 2 strongly opposed the application and submitted that it is a admitted fact that the present suit is filed for declaration and permanent injunction. Defendant No. 2 has filed the application for rejection of the plaint under order 7 rule 11 of

the C.P.C. contending that the plaintiff has not paid the court fee for declaration as required under section 6 of Maharashtra Court Fee Act. The proposed amendment shall not be allowed without compelling the plaintiff to pay the requisite court fee for declaration of ownership. The instant application is not filed on affidavit and the contention in the application is false. Hence, Ld. Counsel for the defendant prayed for the rejection of the application.

5. It is the matter of record that the plaintiff has filed the present suit for declaration and permanent injunction. On perusal of the plaint it is revealed that plaintiff has averred in the plaint about the declaration but he did not seek any relief in prayer clause for declaration. The mistake appears to be a genuine mistake which plaintiff want to rectified by the way of amendment. So far as the payment of the court fee for the declaration is concerned direction was given to the plaintiff to pay the court fee for declaration while deciding the application of the defendants for rejection of the plaint. The proposed amendment appears to be formal in nature and will not change the nature of the suit. No prejudice would be caused to the defendant if proposed amendment is allowed. In view of above reason I am inclined to allow this application and proceed to pass following order.

ORDER

1. Application is allowed.
2. The plaintiff is directed to carry out the amendment within 14 days from the date of the order.

[N. D. Meshram]
Civil Judge Jr. Dn. Shegaon,
Dist. Buldana.

Date : 23.01.2025

I, *P. K. Ingle*, Stenographer of C.J.J.D. & J.M.F.C. Court No.1, Shegaon affirm that the contents of this P.D.F. file order is correct word to word as per the Original Order.