

Order below Exh.28

Defendant has filed this application seeking permission to submit and file on record subsequent pleadings (additional written statement) in view of Order VIII Rule 09 of Code of Civil Procedure, 1908 [hereunder referred to as 'Civil Code'].

2. The defendant asserted that, in view of the order of this court passed on 03.07.2023 the plaintiff amended his plaint and therefore in response to such amendment defendant wants to submit his subsequent pleadings by way of additional written statement.

3. The plaintiff oppose the application by filing his say over leaf of the application.

4. I have heard learned Advocates for both the sides. Perused record. Before turning to the application, at the outset it is important to note here that originally the suit is for mandatory injunction and declaration, case is at the stage of framing of issues and trial has yet not commenced.

5. As per Order VIII rule 9 of Civil Code the the defendant can seek filling of subsequent pleadings to the written statements however it is subject to the discretion of the court and it can not be claimed as of right. Said discretion though wide it has to be exercise judicially.

6. On perusal of the recitals which the defendant sought to submit by way of subsequent pleadings it appears that, the defendant has sought to contend that no such government road as contended by plaintiff is in existence and the map issued by land record officer is also not proper and does not show the exact position. Further there is denial to the

pleadings of plaintiff inserted via amendment. It is matter of record that this application is consequence of amendment which was carried out by plaintiff in pursuant to the order of this court dated 03.07.2023. Since this suit is for mandatory injunction, I find that, such pleadings of defendant are relevant in order to decide the controversy involved in this matter on merit. Moreover, as I have noted earlier, in this case the trial has yet not commenced and therefore considering the stage of this matter no prejudice is going to be caused to any party if the application is allowed as both the parties have equal opportunity to adduce their respective evidence. The defendant is not seeking withdrawal or deletion of any of the contentions raised by him in the written statements filed below Exh. 18. Considering the nature of proposed subsequent pleadings it can not be stated that the defendant is trying to put forward any new case. The proposed subsequent pleading appears to be of consequential in nature. Therefore considering the nature and stage of this case and relevancy of the proposed pleadings I am of the view that this case is fit to exercise the discretion provided under Order VIII Rule 09 of the Civil Code. As such there is no hurdle in allowing the application. Hence, the following order -

ORDER

1. Application is allowed.
2. Defendant is permitted to file his pleadings subsequent to the written statements (additional written statement) on record.

(Order dictated and pronounced in open court.)

sd/-

Date : 01/01/2024

[Megha D. Dajjuka]
Joint Civil Judge Junior Division,
Nandura