

Common Order Below Exh. 15 & 16
(Dated : 19.10.2022)

These are applications filed by plaintiff for amendment of plaint and application for Temporary Injunction vide Order VI Rule 17 of the Code of Civil Procedure, 1908 (*for the sake of brevity hereinafter referred as C.P.C.*).

2. It is contended in the application that the plaintiff has filed present suit for perpetual injunction and mandatory injunction. The present suit is now pending for hearing of application filed at Exh.5. It is the contention of the plaintiff that it is essential to add some necessary information in the plaint and application for temporary injunction. Therefore, plaintiff wants to amend their plaint and application filed at Exh.5.

3. On the other hand, the defendant has filed his say and taken objection to the applications. It is contended in his say that in the alleged sale deed filed by the plaintiff is of Gat no. 78. Now the plaintiff is claiming new Gat no. 78/1/A. It is contradict to pleading of plaintiff. Therefore, defendant prayed for rejection of the application.

4. I have perused the applications, say filed on it by defendant. I also perused the plaint and application filed at Exh.5 alongwith all relevant documents filed on record.

5. I have heard Smt. R. J. Raut, the learned advocate for the plaintiff and Shri. A. P. Parshuramkar, the learned advocate for the defendant.

6. Considering the rival submissions as well as contentions of both the sides, following points arise for determination of the applications and I have recorded my findings to them with reasons as

follows:-

<u>Sr. No.</u>	<u>Points For Determination</u>	<u>Findings</u>
1)	Whether proposed amendment is necessary, just, proper and reasonable in the fact and circumstances of the case ?	In the affirmative
2)	Whether proposed amendment if allowed will change the nature of the suit ?	In the negative
3)	Whether proposed amendment if allowed would result in inclusive new cause of action ?	In the negative
4)	Whether proposed amendment is intending to prejudice the other side ?	In the negative
5)	What order ?	Application is allowed.

REASONS

As to Point No. 1 to 5 :-

7. All the above points are interlinked to each other therefore for avoiding repetition they are discussed together.

8. Basically, present suit is filed for perpetual and mandatory injunction and pending for hearing of application filed at Exh.5. It is true that plaintiff has shown due diligence in introducing the proposed amendment. It can not be ignored that the proposed amendment in present fact and circumstances is essential in nature and it definitely does not change the nature of the suit nor it introduces new cause of action. Rather the proposed amendment is appearing necessary and just to resolving the real dispute in the present matter.

9. I have placed reliance on the judgment given by Hon'ble Supreme Court of India in the case of **Peethani Suryanarayana & Another Vs. Repaka Venkata Ramana Kishore and Others, AIR 2009**

SC 2141 wherein Hon'ble Supreme Court has observed that -

"It is true that the plaintiff-appellant ought to have been diligent in promptly seeking the amendment in the plaint at an early stage of the suit, more so when the error on the part of the plaintiff was pointed out by the defendant in the written statement itself. Still we are of the opinion that the proposed amendment was necessary for the purpose of bringing to the fore the real question in controversy between the parties and the refusal to permit the amendment would create needless complications at the stage of execution in the event of the plaintiff-appellant succeeding in the suit "

10. In case of **Baldev Singh and Others Vs. Manohar Singh and Another, 2006 (3) Bom C J 185 = 2006 (5) Mh.L.J 634 SC** Hon'ble Supreme Court held that it is well settled that court should be extremely liberal in granting prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to other side.

11. In case of **B.K.N. Pillai Vs. Pillai and Another, AIR 2000 SC 614** the Hon'ble Supreme Court held that application for amendment cannot be rejected merely on ground of prolonged delay in filing, especially when other party can be compensated by cost.

(Emphasis supplied)

12. It is well settled by a *catina* of decisions of Hon'ble High courts and Supreme Court that allowing and rejecting an application for amendment of plaint is really the discretion of the court and the amendment of the plaint also should not be refused on technical grounds.

13. On going through the application for amendment in the light of averment in plaint and arguments canvassed before me, it is seen that the amendment sought is bonafide. This court is satisfied that proposed amendment is necessary for the purpose of determining the real question in controversy between the parties and for the fair adjudication of trial. No prejudice would be caused to defendant. Also, objections raised by

the defendant are formal in nature, which can be dealt while conducting trial. This court is convinced that, the amendment sought will not change the nature of suit. It is not the case that, the pleadings were intentionally shielded from this court. The plaintiff is just seeking permission to add new Gat number of the suit property in the plaint and application filed at Exh.5. The nature of amendment is formal one, in my view which will not cause any kind of prejudice to the defendant if proposed amendment is allowed. Present application is filed at earlier stage therefore, there is no question of imposition of any cost.

14. In view of above discussion I answered point no.1 in the affirmative and point no.2 to 4 in the negative and in result, I proceed to pass following order.

ORDER

- 1) The application filed at Exh. 15 and 16 are allowed.
- 2) The plaintiff is allowed to amend their plaint and application filed at Exh.5 within 14 days from the date of this order.
- 3) The plaintiff is directed to file amended copy of the plaint and application for temporary injunction on record without fail within 14 days from the date of this order.

(Dictated and pronounced in open court).

Date : 19.10.2022

(Dr. Vikram A. Avhad)
Civil Judge Jr. Dn., Sadak Arjuni.

मी प्रमाणीत करतो की, या पीडीएफ फाईलमधील मजकुर व मुळ न्यायनिर्णय मधील मजकुर हा एकसारखाच आहे.

लघुलेखकाचे नाव : वि. न. दमाहे
कोर्टाचे नाव : डॉ. वि. अं. आन्हाड,
दिवाणी न्यायाधीश क. स्तर
व प्रथम वर्ग न्यायदंडाधिकारी, सडक अर्जुनी

न्यायनिर्णय/आदेश दिनांक : १९.१०.२०२२
पिठासीन अधिकारी यांनी सही केलेली तारीख : १९.१०.२०२२
न्यायनिर्णय/आदेश अपलोड केलेली तारीख : २०.१०.२०२२