

Order below Exh-38

1- This is an application filed under Order VI Rule 17 of Code of Civil Procedure.

2- In brief, it is the contention of plaintiffs that, the suit is filed in respect of an area of 16.55 Sq.Mtrs. of Plot No.49, an area of 150.00 Sq.Mtrs. of Plot no.50 and an area of 91.35 Sq.Mtrs. of Plot No.51 out of survey no.356 being and situated at Jalna Tq. and Dist.Jalna. Girish Manohar Shingare has purchased the said area from defendant no.1 and his name was recorded in the P.R. card of CTS No.6974/B-49, CTS No.6974/B-50, CTS No.6974/B-51 vide mutation entry no.19745 sanctioned on 02-07-2013.

While drafting the present suit the name of defendant no.2 ought to have been typed as Girish Manohar Shingare instead of Kishor Jagannath Shingare. It is submitted that the said mistake is typographical and therefore requires to be corrected by way of amendment. The hearing of the suit is not yet commenced and the suit is posted for framing of issues. Therefore, there would be no prejudice to the defendant if the proposed amendment is allowed. The record i.e. P.R. card of the suit properties specifically shows name of Girish Shingare against suit properties. Therefore, it is prayed that, it is necessary to replace the name of defendant no.2 Kishor Jagannath Shingare and the name of Girish Manohar

Shingare be inserted.

3- To this application defendant no.2 filed say and submitted that, the application is not tenable in the eye of law. The defendant no.2 has filed written statement on 10-11-2014 and clearly mentioned in para no.3 that, he has not purchased the suit property. Thereafter, about two years later plaintiff has filed this application. The proposed amendment is not typing mistake and therefore, it is prayed that the application may kindly be rejected.

4- Learned Counsel for plaintiff submitted that, typing mistake occurred while drafting the suit and therefore the application may kindly be allowed subject to cost. On the other hand Learned Counsel for defendant no.2 submitted that, defendant no.2 appeared in the suit and submitted that he has no concern with the suit property. The application should have been filed under Order-I Rule 10 of Code of Civil Procedure. Therefore, it is prayed that the application may kindly be rejected.

5- In view of contentions and submission by both the parties, following points arise for determination and findings thereon are given for the reasons stated hereinafter.

POINTS

FINDINGS

- | | | |
|----|---|----------------------------|
| 1- | Whether permission for proposed amendment as sought is liable to be allowed ? | <u>In the affirmative</u> |
| 2- | What order ? | <u>As per final order.</u> |

REASONS

As to Point Nos. 1 and 2 :-

6- Admittedly, in the present matter, the issues are not yet framed and trial has not commenced. The plaintiff is yet to file the affidavit of examination-in-chief.

7- As per Order VI Rule 17 of Code of Civil Procedure, at any stage of the proceedings, the Court may allow either party to alter or amend his pleadings as may be necessary for the purpose of determining the real questions in controversy between the parties.

8- Since it has observed by this Court that the trial has not yet commenced, proviso to Rule 17 of Order VI does not come into picture in this matter. Now, coming to the point that whether the proposed amendment is necessary for the purpose of determining the real questions in controversy between the party is concerned, it

transpires that the plaintiff has sought amendment in respect of the name of defendant no.2. According to plaintiffs, it is specifically mentioned in the P.R. card that one Girish Manohar Shingare has purchased the property and therefore, the name of defendant no.2 Kishor Shingare is required to be replaced. Perusal of record shows that, vide Exh-17 defendant no.2 submitted his say and written statement and in para no.3 it is contended that the suit properties are not purchased by defendant no.2. The plaintiffs are not aware about the properties sold and purchased by the persons. It is also submitted that, in order to harass defendant no.2, on the basis of false information the suit is filed against defendant no.2. He has also claimed Rs.5,00,000/- as compensatory cost.

In order below Exh-29 it is observed by this court in para no.9 that, defendant no.2 has no concern with the suit property as he has not purchased the same from defendant no.1. It is further observed that, from the documents filed by plaintiffs the suit properties were purchased by Girish Shingare who is not party to the present suit. Accordingly, the application for temporary injunction filed by plaintiffs against defendant no.2 was rejected. Therefore, it cannot be said that, typing mistake has been occurred while drafting the plaint. The addition of defendant no.2 in the present suit caused him to appear and answer the claim of plaintiffs in respect of the properties for which he has no concern. Therefore, by the act of plaintiff for adding defendant no.2 in the present suit

caused him monetary loss. However, to decide the suit on merits to adjudicate upon and settle all the questions involved in the suit, I am of the opinion that, the proposed amendment needs to be allowed. For the monetary loss of defendant no.2, he can be compensated sufficiently. The basic structure of the plaint is not changed by the proposed amendment. So, considering all these aspects and the fact that the controversy between the parties to the suit has to be adjudicated on merit that too by giving an opportunity to either of the parties to make out their case before leading the evidence by both of them. Therefore, the present application more particularly the prayer in this application deserves to be allowed. Since the application is filed on the basis of P.R. card, the defendant no.2 is entitled for the cost because it is not subsequent event. With this, Point no.1 is answered in the affirmative.

9- In the light of aforesaid reasonings and findings as above to Point no.1, the application deserves to be allowed. With this point no.2 is answered as per the following order.

ORDER

- 1- The application Exh-38 filed by the plaintiffs is allowed subject to cost of Rs.10,000/-(Rs.Ten thousand only) to be paid to defendant no.2 Kishor Shingare on or before next date.

- 2- The plaintiffs shall carry out proposed amendment and replace the name of defendant no.2 as Girish Manohar Shingare in place of Kishor Jagannath Shingare in the array of defendants within 14 days from the date of order.

Date : 23-11-2016

Sd/-
(Jayshri R.Pulate)
2nd Jt. C.J.S.D. Jalna.

CERTIFICATE

I affirm that the contents of this PDF file are correct as per original order.

Name of Steno : Bobde S.V.
Name of court : 2nd Jt. Civil Judge (S.D.), Jalna
Date of PDF : 25-11-2016

Sd/-
Stenographer