

Order below Ex. 95 in Spl.C.S.No. 16/2010

1. This is an application moved by plaintiff under Order 6 Rule 17 of C.P.C.

2. It is contended that, during the pendency of suit defendant No. 8, the Collector took possession of suit property because transaction between defendant Nos. 1 to 4 and 5 to 7 are without prior permission of Government, so also they are executed in breach of conditions. It is contended that, during the pendency of suit, defendant No. 8 is added as party defendant. However, pleadings in respect of defendant No. 8 and action taken by him and rights available to plaintiff is inadvertently remained to be taken on record. Therefore, it is prayed that, pleadings to that regard may be allowed to be incorporated in the plaint.

3. The defendant Nos. 1 to 7 have filed say below Exh. 97 and strongly opposed this application. It is contended that, to take necessary decision in respect of land is within the domain of Collector and this Court has no jurisdiction to take necessary decisions regarding the land in question. Therefore, proposed amendment cannot be allowed. It is further contended that, the proposed amendment will change the nature of suit. Therefore, proposed amendment may not be allowed. It is further contended that, the suit is part-heard. Therefore, amendment is not permissible at this stage.

4. The learned Advocate for applicant has submitted that, by way of proposed amendment nature of suit will not change, so also in view of addition of defendant No. 8 in the suit the pleadings to that effect are required to be brought on record for just decision of case. He submitted that, the amendment is necessary for deciding the real controversy in dispute, therefore, it can be allowed at any stage. Therefore, merely on the

ground that, suit is part-heard amendment may not be rejected. He submitted that, amendment is necessitated because of subsequent event. Therefore same may be allowed. In support of his submissions he relied on the rulings between the parties Shri Rajaram Naik Vs. The State of Goa, 2016(1) ALL MR 5 and Dhanaji Kashinath Shendkar Vs. Khemchand S. Chawla, 2011(6\_ Mh.L.J. 629.

5. The learned Advocate for defendants has submitted that, the proposed amendment is beyond the scope of present suit and same is not necessary to decide the controversy between the parties. It is submitted that, amendment would not really serve cause of Justice. Therefore, same be rejected. He further submitted that, applicant's suit is for specific performance of agreement between applicant and defendant Nos. 1 to 4. However, by way of proposed amendment applicant seeks direction to defendant No.8 that he should accept 50% amount as per rules and regulations of Government and allot the suit property to applicant. However, present prayer is beyond the scope of suit for specific performance of agreement.

6. After having heard both the sides and going through the record, it becomes clear that, applicant's suit is for specific performance of agreement dated 14-8-2009. As per the pleadings of applicant the specific performance of agreement is sought against defendant Nos. 1 to 4. However, during the pendency of suit, suit property is sold to defendant Nos. 5 to 7. Thereafter, said parties are added in the suit. However, it appears that, defendant No. 8 Collector has taken possession of suit property because of contravention of the conditions imposed in respect of suit property. It was also found that, no permission of Government was taken for sale deed.

7. Now plaintiff sought relief that, Collector be directed to take necessary charges of Government and land be allotted to applicant.

8. However, as discussed supra the applicant's suit is for specific performance of agreement between him and defendant Nos. 1 to 4. Therefore, in present suit the parties are at issue whether plaintiff proves agreement, payment of earnest money, his readiness and willingness to perform his part of contract and whether alternatively he is entitled to recovery of earnest amount, etc. Therefore, it becomes clear that, the pleadings and reliefs which are sought to be incorporated by way of amendment cannot be said to be necessary for deciding the real controversy in dispute. The claim sought to be introduced is not in tune with the reliefs sought in the suit. Therefore, proposed amendment is not necessary for deciding the real controversy in dispute.

9. It also appears that, suit is old. Apart from this the evidence of plaintiff is over and defendant No.1 has filed affidavit of evidence. Therefore, matter is part-heard. Therefore, it is not desirable to allow amendment at this stage. It also appears that, plaintiff has moved application to add defendant No. 8 on 27-10-2014. Therefore, at that time he was aware about the facts which are sought to be introduced by way of proposed amendment. However, present application is moved on 23-9-2015. After about one year of adding of defendant No.8 in the suit Therefore, it becomes clear that, applicant is not diligent in moving application for amendment.

10. It also becomes clear from the proposed amendment that, it will change the basic nature of the suit. Therefore, also application deserves to be rejected.

11. For the above discussed reasons the arguments of learned

Advocate for applicant are not acceptable. However, for the same reasons arguments of the learned Advocate for defendant are acceptable. For the above discussed reasons the rulings cited by applicant are not helpful to him. Hence, the following order.

Order

The application (Exh.95) is rejected.

Sd/-

Date : 20-7-2016.

Civil Judge Sr.Dn.,  
Jaysingpur.

I affirm that the contents of this P.D.F. file Judgment are same, word to word, as per the original Judgment.

Name of the Stenographer	S.R. Ladekhan
Name of Court	Civil Court, Sr.Dn. Jaysingpur.
Date of order	20/07/16
Order signed by the P.O. on	20/07/16
Order uploaded on	21/07/16