

MHKO070010952011



ORDER PASSED BELOW EXH. 87

1] This application is filed by plaintiff under Order 6 Rule 17 of Code of Civil Procedure, seeking permission to carry out amendment in the plaint.

2] Facts of application are stated as under-
Suit is filed by plaintiff for injunction, declaration about sale deed and for possession of suit property. However defendant Nos. 2 and 3 during pendency of suit created third party interest and transferred this property in favour of proposed defendant No.4 Sumitra Masute. Therefore, plaintiff wants to add said Sumitra Masute as defendant No.4 and thereafter he wants to seek relief in respect of sale deed dtd. 10/12/2013. By way of amendment plaintiff wants to prayed that, said sale deed is illegal and prayed for cancellation of said sale deed as well as declaration that, said sale deed is not binding on his share and other consequential amendment.

3] Defendant Nos. 2 and 3 filed their say at Exh.92 and opposed to allow this application contending that, this is a part heard

matter. By way of amendment, plaintiff is introducing new case. Amendment is sought with sole intention to cause delay in this matter. Hence, prayed for rejection of this application.

4] Defendant No.1 filed his say at Exh. 93 and prayed to reject this application. According to defendant, plaintiff should have filed application under Order 1 Rule 10 of C.P.C. Application under Order 6 Rule 17 of C.P.C. is not maintainable. Already plaintiffs witnesses are examined and therefore, at belated stage application for amendment is not tenable. Hence, prayed for rejection of application.

5] Heard both side and gone through record. It appears that, amendment sought by plaintiff in the plaint is a subsequent development that has happened after filing of the suit. In this matter issues are framed on 6/7/2013 and since then matter is pending for evidence of plaintiff. Sale deed in question is executed in the year 2013 and plaintiff has sought relief only in the years 2020. Thus, there appears to be some delay on the part of the plaintiff. However, it is stated by plaintiff that, on going through 7/12 extract, recently it came to his knowledge that, suit property is purchased by Sou. Sumitra Masute and therefore, this application is moved by him. In such circumstances, merely on the ground of delay, said application can not be rejected. It is needless to say that, as per Order 6 Rule 17 of C.P.C., application for amendment can be allowed at any stage of trial, if it is necessary to decide real controversy between the parties.

However, after commencement of trial application for amendment can not be allowed unless court comes to conclusion that, inspite of due diligence parties could not make amendment before commencement of trial. In the case at hand, according to plaintiff when he got knowledge he immediately filed this application. Besides that, no any loss or prejudice will cause to defendants, if this application is allowed and plaintiff is permitted to carry out amendment. They will get opportunity to file Written Statement and contest this case. So far as, delay is concerned same can be balanced by imposing cost. In result, I proceed to pass following order.

ORDER

Application is allowed, subject to cost of Rs. 600/- payable by plaintiff to the defendant Nos. 1 to 3 on or before next date.

Date -20.02.2021.
Jaysingpur.

Sd/-
(K.G. Sawant)
Civil Judge, Sr. Division,
Jaysingpur.