

MHKO090001252021

**COMMON ORDER BELOW EXH. 66 & 67 IN****SPL. CIVIL SUIT NO. 11/2021**

1. First of all, I don't understand that why the plaintiff is filing so many applications on every date. If such applications are being filed, the court cannot proceed with the trial and the matter will prolong in deciding these miscellaneous applications only. At one hand, the plaintiff insist hard that her matter shall be heard expeditiously and on the other hand, she files new application on every date. How it is possible to hear the matter or record evidence when the application will be filed on every date. Naturally the court has to call say of the opposite side and certainly time will require to dispose of such application. Therefore, I sincerely feel that no purpose will be served. I do not understand, whether the plaintiff is interested in filing applications or getting her suit decided.

2. Already application for amendment is pending. The same is filed by defendant Nos. 1 and 2. To that application, the plaintiff replied that without Will she cannot file say on it. Therefore, the direction was given to file Will. However, the record reveals that till today, the Will is not on record. In this regard also, I passed order below Exh. 56 that in case the Will is not filed, the court can draw necessary inference while deciding amendment. Therefore, both the parties should have argued the application for amendment. But because of these applications, the application for

amendment is still pending and for this reason only, it is not possible to record the evidence. Below Exh. 66, she has filed an application stating that criminal proceeding shall be initiated against defendant Nos. 1 and 2. For that, the plaintiff is free to file F.I.R. There is no need that the court shall pass an order. Unless the offence of forgery in court record, the party can suo-moto file F.I.R. Similarly, in prayer 'C' of Exh. 66, she asks possession of the suit premises. Such applications are to be filed as per Section 94 of the Code of Civil Procedure. If temporary injunction is to be sought, the application is to be filed under Order XXXIX of the C.P.C. Application Exh. 66 is not filed under Order XXXIX of the C.P.C. It does not have an affidavit in support of it. It is not even signed by the advocate. Therefore, the plaintiff shall file appropriate application, if she wants to claim temporary injunction.

3. The relief of granting of possession cannot be granted under Section 94 of the C.P.C. it is not covered under the supplementary proceeding. Hence, the application Exh. 66 is disposed of.

4. Regarding application Exh. 67, it is directed to the plaintiff as well as defendants that on next date, application for amendment will be heard either with or without Will on record. In case of non filing of Will, the court will draw necessary inference. In these terms, the application Exh. 67 is disposed of.

Date : 22.08.2023

( G. V. Deshpande )  
Civil Judge Senior Division,  
Gadhinglaj