



**ORDER BELOW EXH. 53 IN R.C.S. No.
183/2023**

Vilas Dattatray Jadhav etc.01 Vs. Mohan Rangrao Patil
etc.02

CNR -MHKO130013152023

01. This is the amendment application of the defendants filed under Order 6 Rule 17 along with section 151 of the Code of Civil Procedure (In short 'C.P.C.') with request to amend the written statement.

Brief facts of the defendants case is as under:-

02. As per the defendants, the suit properties are in their possession. They have filed on record copy of agreement to sell executed in the year 1972. Dispute of landed properties of predecessors of the defendants Rangrao was went up to the Hon'ble High Court. Therefore, documents pertaining to those disputes were in the custody of different advocates. While taking search of these documents, on 11/02/2024 the defendants have found certain new documents & the agreement to sell executed in respect of the suit properties. In view of the new founded documents, amendment is necessary to be made in the written statement. Thus, with this request, the current application is filed.

03. Through the current application the defendants wish to enter paragraph pertaining to the agreement to sell dtd. 11/05/2004 executed in between the parties to the agreement to sell. The defendants have further wishing to add paragraph pertaining to their possession over the suit properties. The defendants further wish to correct the name "Daulat" as "Dattatray", as Daulat was mistakenly typed. Thus, with these proposed amendments, the current application is moved.

04. The application is objected by the plaintiff by his say below Exh. 55. It is submitted that, application is itself false, bogus & not tenable. Argument of plaintiff, below Exh. 5 is already completed. The matter is pending for argument of the defendants. However, instead of arguing on Exh. 5, the defendants are prolonging the matter. The proposed amendment as sought in the written statement is not acceptable to the plaintiff. Pleading of the defendants pertaining to the execution of sale-deed is not admitted to this plaintiff. Agreement to sell is itself false & bogus. The amendment as sought is not subsequent in nature. Therefore, the plaintiff has prayed to reject the same.

05. Heard learned Advocate Shri. A. K. Patil for the plaintiffs and learned Advocate Shri. A. J. Desai for the defendants.

06. In view of rival submissions from both sides, following points are arise for my determination and my findings with respect to the same points is as under:-

	<u>POINT</u>	<u>FINDING</u>
1.	Whether the proposed amendment in written statement is necessary for deciding real controversy between the parties ?	In the Affirmative.
2.	What order ?	As per final order.

:- REASONS :-

As to Point No. 1 :-

07. The defendants through current application are proposing to add paragraphs pertaining to the agreement to sell that was executed on 11/05/2004. They further wish to add paragraph demonstrating their possession over the suit properties. The defendants have come with specific pleading that, document of agreement to sell was in the possession of High Court advocate. Recently, the same document is

came to the knowledge of the defendants. This document is important as far as the suit property is concerned. The document is important to decide the controversy between the parties. Therefore, the defendants are praying for this amendment.

08. Certainly, the plaintiffs have denied execution of agreement to sell. The merit of agreement to sell is a part of merit. The same can not be decided at this stage. The defendants are claiming their long possession over the suit properties on the basis of this agreement to sell. To the contrary, the plaintiffs are also claiming their possession over the suit properties.

09. In such a controversy, on newly founded document of agreement to sell allegedly related with the suit properties, an opportunity needs to be given to the defendants to put-forth their case properly before the Court. Else, it will amount to denial of opportunity to them. Apart from it, the defendant has sought change in name from "Daulat" to "Dattatray". The same being a typographical mistake, I do not have any hesitation to allow the same. The suit is at initial stage. Interim application is yet to be decided. Hearing of the suit is yet to begin. Thus, in these factual aspects, I answered point no. 1 in the affirmative.

As to point No. 2:-

10. As the point No. 1 is answered in the affirmative, the application will succeed. For the delay caused due to the current application, some costs needs to be imposed on the defendants. Hence, in answer to point no. 2, following order is passed:-

ORDER

1. Application (Exh. No. 53) is allowed subject to cost of Rs. 200/- payable by the defendants to the plaintiffs within

07 days from today.

2. The defendants to carry out proposed amendment within stipulated time and to supply copies of amended written statement forthwith.

Kagal

Date:- 12/04/2024.

(A. B. Jawale)

Jt. Civil Judge Junior Division, Kagal.