

MHKO150002502014



Order Passed Below Exh. 39 in R.C.S. No. 63/2014

CNR NO. MHK015-000250-2014

1. Present application is moved by plaintiff under order 6, rule 17 of Code of Civil Procedure for amendment in plaint. To this application defendants have filed their say below same Exh and strongly objected the application of plaintiff's.

2. By way of this application plaintiff contended that, suit is instituted for partition, separate possession and perpetual injunction. In such a circumstances, defendants have filed their written statement at Exh. 29. During the suit on 01.11.2014 defendants have got executed relinquishment deed from plaintiff's. Therefore, complaint filed against defendants. Process was issued against defendants and criminal case is pending in the same court. Defendants taking disadvantage of illiteracy of plaintiff's therefore, to decide the suit on merit amendment in plaint is asked. Amendment if allowed, they no harm would be caused to defendants but if rejected then plaintiff's would get irreparable loss. The nature of suit would not be change if application is allowed. Considering this grounds, application may kindly be allowed.

3. Defendant objected on the ground that issues were framed at Exh. 35. Then subsequently application is moved for amendment. The suit is called for hearing. Therefore, amendment application is not tenable. The duty of plaintiffs to secure the attendance of witnesses for cross examination. If application is allowed then nature of suit will be changed. Therefore, application may kindly be rejected.

4. Ld. Adv for plaintiffs A. S. Farakate submitted that, amendment to the plaint is necessary because, to decide the matter on merit it will help to the proceeding of case. If application is rejected then harm will be caused to plaintiffs. On the other hand no harm will be caused to defendants if application is allowed. The nature of suit is for partition and perpetual injunction. The opportunity to file additional W. S. evidence will be given to defendants at the time of hearing of suit. Therefore, application may kindly be allowed.

5. Ld. Adv. for defendants G. T. Thakur submitted that, application moved by plaintiffs is not tenable because issues were framed and suit is called for hearing. The plaintiffs intentionally prolonging the hearing of suit by filling such type of application. Hence, application may kindly be rejected.

6. I have gone through the record of the case, argument of parties. It appeared that, application is moved for permission to amendment in plaint. Here, order 6, rule 17 of Code of Civil Procedure is applicable which allows the party to move application for amendment in pleading. Here,

pleading is base of suit upon the pleadings parties are entitled for leading evidence. At this stage, hyper technical view as to the merits of the case cannot be taken because merits of the case depend upon the evidence and trial of case. This interim application does not permit to go into the merits of the case. Hence, no purpose would be served by rejecting the present application because opportunity to party for giving evidence will be open at appropriate stage. Therefore, I proceed to pass following order.

ORDER

1. Application Exh. 44 is allowed. Subject to costs of Rs. 1,000/- to defendants.
2. Plaintiff shall carry out amendment and shall file appropriate copy of amended plaint.
3. Plaintiff's do fulfill necessary conditions.

Date : 26/04/2019

(K. K. Khomane)
Civil Judge, Jr. Dn.,
Ajara