

ORDER PASSED BELOW EXH. 32

1. Defendant Nos. 1, 4, 5 to 7 have filed the present application to amend the Written Statement. By way of proposed amendment defendants proposes to insert para No. 12a, 12b and 12c in their original pleading and proposes to plead that the agreement dtd. 11/03/97 is not an agreement to sale. According to defendants they have accepted Rs. 50,000/- from plaintiff as hand loan and it was decided between the parties that defendants will deduct the hand loan amount in equal proportion from the amount of monthly rent due from plaintiff to them. Defendants further proposes to plead that the suit property was allotted to their predecessor in interest by Government, therefore considering the nature of ownership and provisions in Maharashtra Land Revenue Code about use of land for the non-agricultural purpose, plaintiff has no right to enforce the agreement dtd. 11/03/97. Further according to defendant, on 11/03/97 defendant Aarati Dhale and Samir Dhale was minor therefore, agreement is not enforceable against them.

2. Perused record. Heard Advocate for both sides. Plaintiff by filing say Exh. 91 has objected the amendment petition contending that defendants are not diligent and proposes to add inconsistent pleading to their earlier pleading and prayed to reject the amendment application.

3. On the other hand learned Advocate for defendant has argued that the proposed amendment is formal one and it will not changes the nature of suit. The proposed pleading is explanatory one and necessary to determine entire controversy finally between the parties. In support of argument defendants have placed their reliance on following rulings.

1. **Vidyabai and others V/s. Padmalatha and another, 2009(4) Mh.L.J. 30**

Wherein Hon'ble Supreme Court has held that, date on which the issues are framed is the date of first hearing and filing of an affidavit in lieu of examination-in-chief of the witness, would amount to "commencement of proceeding".

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2. **Baburao Sahebrao Deshmukh V/s. Maharashtra Insecticides Limited Akola and others, 2004(2) Mh.L.J. 717.**

Wherein Hon'ble Bombay High Court has held that, amendment can be allowed at any stage of proceeding including where the case is reserved for judgment.

3. **R.K. Patel Engineers and Contractors Pvt. Ltd. V/s. City and Industrial Development Corporation of Maharashtra Ltd and another, 2014(5) Mh.L.J. 380**

Wherein Hon'ble Bombay High Court has held that, Court has wide powers and unfettered discretion to allow amendment at any stage of proceedings. Main purpose of allowing amendment is to minimize litigation. Even if amendment prayed is belated, court must bear in favour of doing full and complete justice.

4. Perused record. Plaintiff has filed present suit against defendants for specific performance of contract and for perpetual injunction; on the basis of agreement dtd. 11/03/1997 contending that it was decided between the parties that if defendants failed to repay the amount of Rs. 50,000/- within one and half year of the date of the agreement, plaintiff is entitled to purchase the suit property for prize Rs. 70/- per square feet. Record further shows that on 21/08/2007 defendants have filed their Written Statement at Exh. 46 and contended that the agreement is false. Defendants were never intended to sale the suit property to plaintiff and denied the entire suit of the plaintiff. Consequently issues are framed on 6/8/2008 and thereafter on 11/10/2010 plaintiff has filed his affidavit in lieu of examination-in-chief and suit was posted for cross examination. Further record shows that thereafter defendant No.2 died and plaintiff has brought the legal heirs of defendant No.2 on record. Meanwhile defendants have filed present application.

5. Though defendants have applied for amendment at belated stage,

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considering the nature of dispute and the earlier pleading of defendants, as well as the Law laid down by Hon'ble Bombay High Court in 2014(5) *Mh.L.J.* 380. I am of the opinion that by way of proposed amendment defendants does not proposes to add the contrary pleading to their earlier pleading and does not withdraw any admission. The proposed amendment is consistent with their earlier pleading, though in the year 2010 plaintiff has filed his affidavit in lieu of examination-in-chief because of death of defendant No.2 the matter was lingering at unready stage. Further considering the nature of suit the questions raised by defendants about the agreement dtd. 11/03/97, I am of the opinion that proposed amendment is necessary to decide the entire controversy between the parties finally at one suit. The order of cost will definitely serve the purpose so far as delay is concerned. Hence following order.

ORDER

1. Application Exh. 90 is allowed, subject to cost of Rs. 200/- (Rs. Two Hundred only) to other side.
2. Defendants to carry out the amendment within statutory period.

Sd/- dtd. 30/10/2014

(M.S. Gade)

Jt.Civil Judge, Jr.Dn., Kurundwad,
Tal.Shirol, Dist. Kolhapur.

Dtd. 30/10/2014.