

MHLA110000982016**Order below Exh.95 in RCS No.119/2016****Raosaheb Vs. Layakpasha**

This is an application filed by plaintiff under Order 6 Rule 17 CPC for granting permission to carry out proposed amendment in the plaint, on the grounds stated in the application. The contents of application in short are:- That the plaintiff has filed suit for specific performance for re-conveyance and/or for redemption of the mortgaged property with perpetual injunction. That the above transaction took place between plaintiff and defendant No.1 is redemption of mortgaged property and it was to be redeemed in favour of plaintiff due to execution of Kabuliyat Nama executed on 11/04/2001. That as per plaintiff he has executed nominal sale deed in favour of defendant no.1, who in turn dispose of the suit property in favour of defendant No.2 without obtaining consent of plaintiff. It is necessary to carry out proposed amendment in the plaint. Hence, the application.

2. Defendants have filed their say and raised strong objections on several grounds. The contents of their say in short are :- That the suit is posted for final argument since 29/08/2023. The proposed amendment is contrary to the theory of plaintiff. There is no document to support the contentions in the proposed amendment. It is changing the nature of suit and no subsequent event has occurred for filing present application. The application requires to be rejected as it is filed at the fag end of the suit. Hence prayed that application may be rejected.

3. Perused application and say. Heard learned advocate Shri. J.B.Suryawanshi for plaintiff and learned advocate Shri U.S.Jadhav for defendants. Both of them have submitted in the line of their application

and say respectively. Record shows that plaintiff has filed this suit for specific performance of re-conveyance of the suit land, described in para No.1 of the plaint, and perpetual injunction. Defendants have contested the claim of plaintiff by filing their WS at Exh.17 on 29/06/2016. Issues are framed at Exh.26 on 27/09/2016. Record further shows that plaintiff has examined himself and his witnesses and closed his evidence vide pursis at Exh.62 on 11/04/2019. Defendants have chosen not to lead their oral evidence.

4. Record further shows that since 12/12/2022 the suit is posted for final argument and the plaintiff has sought adjournments on several occasions. On 15/03/2023, his application at Exh.88 seeking adjournment came to be rejected and he was precluded from arguing the matter. On the same day defendants have partly argued the matter. On 13/04/2023 plaintiff did nothing and the defendants have again partly argued the matter. On 21/04/2023 plaintiff moved an application at Exh.89 for granting permission to argue the matter, which came to be allowed by imposing cost of Rs.300/- . Plaintiff paid the cost amount and his advocate had partly argued the matter.

5. On 07/06/2023 the plaintiff changed his counsel and the newly engaged counsel after seeking adjournment on two occasions has again moved an application at Exh.94 on 07/08/2023, which came to be rejected and again the plaintiff was precluded from conducting the remaining argument. On 29/08/2023 learned advocate for defendant has completed his argument and since 06/09/2023 the matter was posted for judgment. This application came to be filed on 13/09/2023 and 30/09/2023 the defendants have filed their say. From the contents of plaint it reveals that the plaintiff has pleaded that the transaction between him and defendant No.1 in respect of suit land was executed towards security of the hand loan amount given by latter to former. It is pertinent to note that issue Nos.1 and 2 are specifically framed after

taking into consideration the facts pleaded in the plaint.

6. By way of proposed amendment plaintiff wants to plead the facts regarding the alleged transaction which took place between him and defendant No.1 amounts to redemption of the mortgaged property. It is pertinent to note that the suit came to be filed in the year 2016. Plaintiff was very well aware about all these facts at the time of preparing the plaint and despite this, there is no whisper in the plaint regarding the transaction amounts to redemption of the mortgaged property. The proposed amendment is sought at the fag end of trial and more particularly, when the matter is posted for judgment. The trial is concluded. The proposed amendment, if allowed, will change the nature of suit and it is not permissible in the eyes of law. The application is devoid of merits and is liable to be rejected. In the result, I pass following order:-

ORDER

1. Application is rejected
2. No order as to costs.

Date : 30/10/2023

(Ashish B. Marlecha)
Civil Judge (Sr.Dn.),
Nilanga, Dist.Latur.