

Order below Exh.64 in RCS No.409/2016

This is an application filed by defendant Nos.1 and 2 under Order 6 Rule 17 CPC for granting permission to carry out proposed amendment in their WS at **Exh.23** by which they want to replace the area of 1 Acre 35 Gunthas with 2 Acre 13 Gunthas in respect of deceased Dashrath Mule and to replace the area of 24 Gunthas with 21 Gunthas in respect of plaintiff as and where appearing in their WS, on the grounds stated in the application. Plaintiff has filed his say and raised strong objection on several grounds. Perused application and say. Heard both the sides. Both of them have submitted in the line of their application and say respectively.

2. Record shows that plaintiff has filed this suit for recovery of possession. Defendant Nos.1 and 2 have filed their WS at **Exh.30** on 14/08/2017. Defendant Nos.4 to 6 have adopted this WS by filing pursis at **Exh.30** on 16/01/2018. Issues are framed at **Exh.32** on 19/11/2018. Plaintiff examined himself at **Exh.40** and his cross examination came to be recorded on 07/12/2022. Plaintiff has examined Shri Gulab Chandar Patil @ Mule as PW No.2 at **Exh.53** on 17/01/2023 and his cross examination came to be completed on 24/02/2023. Plaintiff closed his evidence vide pursis at **Exh.54** on 24/02/2023.

3. Record further shows that the application filed by defendant Nos.1 and 2 on 27/09/2023 seeking adjournment vide **Exh.55** came to be allowed as last chance. Despite this, on 27/10/2023 they again sought adjournment by moving an application at **Exh.56**, which came to be rejected and necessary order came to be passed at Exh.1. This order at Exh.1 preventing defendant Nos.1 and 2 from adducing evidence came to be set aside by allowing their application at **Exh.59** on 01/02/2024 and in the result, the evidence of defendant

No.1 at Exh.63 came to be read and recorded. In short, the trial is not only commenced but it is on the verge of conclusion. Defendant Nos.1 and 2 ought to have moved this application at the earliest possible opportunity. It appears that defendant Nos.1 and 2 didn't noticed this mistake at the time of filing WS but also not at the time of filing affidavit of defendant No.1 at Exh.63. There is no due diligence on the part of defendant Nos.1 and 2 in moving this application. There is substantial delay in moving present application. This delay can be compensated by imposing heavy cost upon defendant Nos.1 and 2. In my opinion, the proposed amendment is not going to change the nature of suit and it is necessary for deciding real controversy between the parties. No prejudice will be caused to plaintiff because the plaintiff is not going to change the facts averred in the plaint. For these reasons and to adjudicate the claim on merits, I pass following order:-

ORDER

1. Application is allowed subject to cost of Rs.5,000/- to be payable by defendant Nos.1 and 2 to plaintiff on next date or any other date as extended by the Court.
2. After payment of cost amount and its acknowledgment by plaintiff, defendant Nos.1 and 2 shall carry out proposed amendment in their WS at Exh.23 and shall provide copy of amended WS to the Court and for plaintiff at the earliest.

Date : 19/07/2024

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