

Below Exh. 70**ORDER BELOW EXH.70, IN R.C.S. No.25/ 2020**

(Passed on dated 12.03.2024)

This is an application filed by the defendants for amendment in plaint vide *Order 6 Rule 17* of Civil Procedure Code.

FACTS IN THE APPLICATION

02. The defendants/applicant have contended that, defendant has purchased the suit property from Rajesh Malharrao Narneniwar vide agreement to sale, however, due to mistake, the fact of agreement to sale or purchase, its consideration amount and four boundaries of land is yet to mention in the written statement. Therefore, defendants seek permission to amend the written statement and add contention in respect of measurement.

FACTS IN THE SAY OF DEFENDANTS

03. The plaintiff has strongly objected the application vide their say. According to them, defendants defendants have filed delayed application which is not tenable. The proposed amendment is not necessary to determine the controversy of the parties. Accordingly, plaintiff prayed to reject the application.

Argument.

04. Heard the learned counsel Shri S.S.Tajne for defendant and Shri D.G.Kale for plaintiff.

POINTS AND FINDINGS

05. Upon hearing the following points arise for my consideration and I record my findings thereon as under for the reasons to follow :-

<u>Sr. No.</u>	<u>POINTS</u>	<u>FINDINGS.</u>
01.	Does proposed amendment is necessary to determine the real questions between the parties?	Yes..
02.	Can the amendment be allowed, as prayed for?	Yes.
03.	What order?	Application is allowed.

Below Exh. 70

REASONS AS TO POINT NO. 1 & 2

06. I have gone through application and say. I also gone through relevant provision of Code of Civil Procedure-

17 Amendment of pleadings. The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement Of trial.

07. Admittedly, amendment of pleading is basically for purpose of bringing about the final adjudication in a suit and to avoid multiplicity of proceedings.

08. On perusal of present application and record it appears that plaintiff has filed suit for perpetual injunction against dependents. The claim of plaintiff is dined by defendants vide their written statement Exh 19. Defendants denied the ownership and possession of plaintiff. But now defendants wants to add the transduction taken placed between them and Rajesh Malharrao Narneniwar. As defendants already denied the claim of plaintiff vide their written statement then proposed amendment will not borne new case.

09. It is to be noted that the evidence of both parties has not concluded, there is main dispute about ownership and possession over the suit property. The defendant wants to explain their defence by proposed amendments. Therefore, the proposed amendment is not a new fact, rather proposed amendment appeared to be explaining and narrating factual position of the suit property. Accordingly, concern amendment is appeared to be necessary to determine actual controversy between the parties. Therefore, the amendment is just and necessary. Accordingly, I answer Point No. 1 & 2 in the 'affirmative' and proceed to pass the following order.

ORDER

- 01.** The application Exh.70 is allowed.
- 02.** Defendants to carry out proposed amendment in their written statement within (14) days of present order.
- 03.** The costs will be in the cause.
(Pronounced in Open Court)

Sd/-

Date :- 12.03.2024.
Kinwat

(S. B. Ambhore)
Civil Judge, Jr. Dn. Kinwat

Certificate

I affirm that the contents of this P.D.F. file Order are same word to word, as per the original Order.

Name of the Stenographer : Chitmalwar S.M.
Court Name : Court of C.J.J.D., Kinwat
Date : 12/03/2024
Order signed by
the Presiding Officer on : 12/03/2024
Order uploaded on : 12/03/2024

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