



ORDER BELOW EXH.64

(Passed on 12th day of March 2024)

1. This is an application filed by the plaintiff under Order VI Rule 17 of the Civil Procedure Code for amendment in the plaint. It is his contention that, he has filed the present suit for Specific Performance of Contract against the defendant. While the typing the suit in para No.7 page No.5 and while preparing evidence of attesting witness No.1 of the agreement to sale dated 03.03.2015 and 04.02.2022 he came to know that the correct year is 2015 instead of year 2016. Therefore, they wants to correct the year accordingly in the para No.7, page No.5 of the plaint and also in para No.7 of Evidence Affidavit of plaintiff. So kindly he may be permitted to amend the plaint and affidavit.
2. The application is strongly opposed by the defendant. It is his contention that, the evidence of the plaintiff is completed by this amendment in evidence of affidavit the plaintiff is willing to brought a new evidence in his previous evidence. Therefore, he prayed to reject the application.
3. Heard the learned Advocate Smt. Shukla appearing for the plaintiff. She has submitted that, the plaintiff has filed the suit for Specific Performance of Contract. She took me to the written agreement to sale in which it is specifically shown that, the agreement to sale came in existence on 03.03.2015. Therefore, she prayed to grant permission to amend the plaint.
4. Per Contra the learned Advocate Shri. Muley appearing for the defendant submitted that, already chief examination of the plaintiff is

completed and the cross examination is continue. Through this application the plaintiff wants to fill up the lacuna. Hence, he prayed to reject the application.

5. On perusal of the record, it reveals that, the agreement to sale between the plaintiff and defendant is came in existence on 03.03.2015. The plaintiff had issued the notice to the defendant on dated 20.01.2016 in which she has specifically mentioned the date of agreement for sale of agricultural land on 03.03.2015. So also the plaintiff in the plaint has given date of agreement to sale in para No. 2, 3 are 03.03.2015. However, in para No.7 he specifically pleaded that, the agreement to sale came in existence on 03.03.2015 was signed by the defendant and acknowledged the prayer thereof. However, he further pleaded the witness also put their signature along with the defendant on **07.07.2016**. Definitely this date of signing by the witnesses is inadvertently type. In all over the plaint and the affidavit the plaintiff categorically stated that the execution of agreement to sale came in existence on 03.03.2015. However, in the para No,.7 and plaint of affidavit this date is arisen due to the typographical mistake.

6. On perusal of record it also reveals that, the chief examination of the plaintiff is completed and the cross examination is deferred. If the permission is granted to amend the plaint then obviously the plaintiff will accrued the right for filing the chief examination. If the plaintiff is allowed to allow the amendment in affidavit then the learned Advocate appearing for the defendant can cross examine him on the point of amendment, if he think so necessary. Therefore, no prejudice will be caused to the defendant. Per contra plaintiff will suffer irreparable loss. If the proposed amendment is allowed then no prejudice will be caused to the defendant and nature of the suit will not change. Hence, considering the above discussion, in the interest of justice, I proceed to pass the following order.

ORDER

1. The amendment application (Exh.64) filed by the plaintiff under Order VI Rule 17 to amend the plaint and affidavit Exh. 29 is hereby allowed .

Saoner.

Date : 12.03.2024

(S. A. Sardar)

C.J.S.D. Saoner, Dist. Nagpur

CERTIFICATE

I affirm that the contents of this PDF file of order are word to word as per original order.

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Smt. A. J. Chichate
Stenographer(Grade-II)