



CNR No.-MHNG100010722017  
Spl.C.S.No.100/2017  
(Old Spl.C.S.No.35/2014)  
Bhagatsingh+2 Vs. Arun

**ORDER BELOW EXH.105**

*(Order passed on 15<sup>th</sup> day of February, 2020)*

[01] This is an application filed by plaintiff to carry out the amendment in plaint Exh.01.

[02] Perused the application and say given over leaf by defendant. The suit is for specific performance of contract, declaration and permanent injunction. By way of this application, it has been contended by plaintiff society that even though vide agreement to sale dt. 31.05.2013 defendant has specifically agreed to sale out the suit shop block assuring its area as 985 Sq. Ft., however as per the map sanctioned by Nagar Parishad Umrer the area of suit shop block is seems to be very less i.e. to the extent of 64.03 Sq. Mtrs. It is averred that during suit claim the plaintiff society has already prayed to direct the defendant for seeking extension of area about suit shop block from Nagar Parishad Umred.

[03] It is averred that now in alternative plaintiff society wants to get execute the sale deed of sanctioned area and wants to pray for compensation about remaining area agreed to be sold out by the defendant. It is further averred that in case if it is found that the

plaintiff society is not entitled to the relief of specific performance of contract then plaintiff society in alternative wants to pray for refund of the amount paid to the defendant along with the interest thereon. It is averred that the amendment proposed by society will not change the nature of suit and no prejudice would be caused to the defendant if plaintiff society allowed to carry out the proposed amendment. Thus, plaintiff society prayed for allowing the application.

[04] On the other hand, defendant vide his say overleaf has strongly opposed the application. It has been submitted that the amendment proposed by plaintiff society is belated and after thought one. It has been contended that the defendant has already refund the entire part consideration amount along with the interest worth of Rs.8,27,900/- before institution of the suit. It has been contended that the plaintiff society has no right to claim any alternative relief as prayed. Thus, defendant prayed for rejection of the application.

[05] Heard Ld. Counsels for both sides at considerable length. Considering the contentions put forth by both sides, following points are arise for my determination to which I have recorded my findings for the reasons to follow.

<b>Sr. No</b>	<b>Points</b>	<b>Findings</b>
1	Whether the proposed amendment is liable to be allowed ?	<b>In the Affirmative</b>
2	What Order ?	<b>Application is Allowed.</b>

**REASONS.**

**As to point no.1 and 2 :-**

[06] Considering the submissions made by both sides, if we go through the pleading, the suit is for specific performance of contract, declaration and permanent injunction. It is the contention of plaintiff society that by virtue of an agreement dt.31.05.2013 defendant has agreed to sale out the suit shop block assuring its area as 985 sq.ft. It has been contended that even though defendant agreed to sale out suit shop block having area 985 Sq. Ft., however, as per sanctioned map issued by Nagar Parishad Umred the area of suit shop block is very less i.e. to the extent of only 64.03 sq.mtrs. It has been contended that during suit claim the plaintiff society has already prayed for directing the defendant to seek extension of area regarding suit shop block from Nagar Parishad Umred.

[07] Now by way of proposed amendment plaintiff society wants to submit that in case if it is found that the plaintiff society is not entitled to get the area of suit shop block extended from Nagar Parishad Umred, in this situation in alternative plaintiff society wants to execute the sale deed of the sanctioned area and wants to claim the refund about proportionate amount of sale consideration for remaining area to the extent of 985 Sq. Ft. It has been contended that by way of proposed amendment plaintiff society alternatively wants to claim refund of earnest amount with interest thereon.

[08] The defendant has opposed the amendment on the ground

that the alleged agreement dt.31.05.2013 executed with plaintiff society has already been cancelled and he has already refunded the earnest amount with interest worth of Rs.8,27,900/- to plaintiff society. So far as this contention put fourth by defendant about cancellation of agreement dt.31.05.2013 and refund of part consideration amount is concern certainly at this stage it cannot be concluded that the defendant has already refunded the earnest amount along with interest to plaintiff society. At this stage court has to see whether the plaintiff society is legally entitled to carry out the proposed amendment as prayed.

[09] So far as the amendment of pleading is concern, while deciding this issue court has to see whether the proposed amendment is necessary to decide the real question in controversy. In view of the provision of section 22 of the Specific Relief Act, 1963 any person suing for the specific performance of contract for the transfer of immovable property may in an appropriate case ask for the relief of possession, partition, refund of earnest money etc. In view of the proviso to Sub-section 2 of section 22 the court shall at any stage of proceeding allow the plaintiff to amend the plaint regarding the relief stated in section 22 of the Act. Here in case at hand, by way of proposed amendment plaintiff wants to pray for alternate relief regarding the execution of sale deed to the extent of sanctioned area. Plaintiff wants to claim refund of earnest amount with the interest thereon.

[10] Considering the dispute pending between the parties I think, if the proposed amendment is allowed no prejudice is seems to be

caused to the defendant. Likewise, if the proposed amendment is allowed no nature of suit is going to be changed. No doubt plaintiff society would have prayed for the proposed alternative relief during initial pleading. The plaintiff society would have prayed for alternative relief during its initial amendment application below exh.33 dt.09.07.2015. Thus, there is delay in proposing the amendment. However, mere delay is not the ground for rejection of the application. Moreover, so far as delay is concern, the defendants can be compensated by way of costs. Hence, considering the discussion given supra proposed amendment is seems to be liable for allowed. Hence, I answer point no.1 in affirmative and in answer to point no.2 I proceed to pass the following order.

**ORDER.**

- [01] The application (Exh.105) is allowed subject to costs of **Rs.1,500/-** (Rupees One Thousand Five Hundred) payable to the defendant.
- [02] On payment of costs plaintiff to carry out the proposed amendment and to supply amended copy for court record as well as for defendant.

Umrer.  
Date : 15/02/2020

**(S. K. Fokmare)**  
Civil Judge Senior Division, Umrer.

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**6**

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**Certificate**

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

Name of Stenographer : **Mr. Mahendranath D. Nagpure.**  
**Stenographer (Grade III)**

Court Name : Civil Judge Senior Division, Umrer

Order checked and signed on : 15/02/2020

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