



CNR No.MHNG100015052017
Spl.C.S. No.10/2017
(Old Spl.C.S. No.498/2015)
Keshav Vs. Shivkumar

ORDER BELOW EXH.64
(Order passed as on 16th day of June, 2020)

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

[02] Perused the application and say given over leaf by defendant. Heard Ld. Counsel for both sides itself before initiation of the lockdown. The suit is for specific performance of contract and for permanent injunction. By way of this application, it has been contended by applicant plaintiff that before entering into the transaction in question he had entered into an transaction with defendant for purchasing the adjacent land of suit property. It has been contended that the suit land and the land of earlier transaction was part and parcel of old gat no.61. It has been contended that due to oversight while institution of suit plaintiff failed to give these material instructions to his counsel and thereby failed to state these material facts before the court. It has been contended that the proposed amendment is necessary for deciding the suit on merit. It will not change the nature of suit. Thus, plaintiff prayed for allowing the application.

[04] On the other hand defendant vide his say overleaf has resisted the application. He has strongly opposed the application by submitting that the plaintiff by way of this application is trying to fill up the lacuna. It is averred that the plaintiff has not shown any reason about the delay caused for claiming the amendment. It is averred that the plaintiff has already submitted his affidavit about evidence in chief. The amendment in question is not about any subsequent event. Thus, defendant prayed for rejection of the application.

[05] 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.

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

REASONS.

As to point no.1 and 2 :-

[06] Considering the rival contentions raised by both sides if we go through the pleading of parties, admittedly the suit is for specific performance of contract and for permanent injunction. It has been contended that before entering into the transaction regarding suit field the plaintiff had purchased 0.81 H.R. land from same gat no.61 i.e. the land adjacent to the suit field. It has been contended that the land was

purchased from defendant. For deciding the suit in question it is very necessary to put fourth the facts of earlier transaction before this court. Defendant has opposed the application by contending that the proposed amendment could have been stated while put forthing initial pleading. According to defendant there is delay on the part of plaintiff. The delay has not been satisfactorily explained.

[07] So far as, the amendment of pleading is concern while deciding this issue, the court has to see whether proposed amendment is necessary to decide the real question in controversy. The court has to see whether any prejudice will be caused to opposite party if the amendment is allowed. The court has to see whether the nature of suit is going to be changed if the amendment is allowed. Considering all these aspects if we go through the record at hand admittedly, the dispute pending between plaintiff as well as defendant is about specific performance of contract. Considering the dispute pending between the parties I think the fair opportunity to put forth their grievance needs to be given to both plaintiff and defendant. No doubt as stated by defendant, plaintiff has supplied his affidavit about evidence in chief, and there is delay on the part of plaintiff, however when the amendment in question is necessary for deciding the matter on merit, the liberal approach should be adopted while considering the amendment. Mere delay is not the ground for rejecting the amendment. Moreover, so far as delay is concern, the defendant can be compensated by way of costs.

Hence, in view of the discussion given supra I think the amendment proposed by plaintiff is liable to be allowed. Accordingly, 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.64) is allowed subject to costs of Rs.1,000/- payable to defendant.
- [02] On payment of costs plaintiff be permitted to carry out the amendment as prayed.
- [03] Plaintiff to carry out the proposed amendment within stipulated time as per law and to supply amended copy of plaint for court record and for defendant.
- [04] Dictated and pronounced in open court.

Umrer.
Date : 16/06/2020

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

**Order Below Exh.64
Keshav Vs. Shivkumar**

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**Spl.C.S. No.10/2017
(Old Spl.C.S. No.498/2015)**

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 dictated on : 16/06/2020

Transcription ready on : 16/06/2020

Order checked and signed on : 16/06/2020

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APPLICATION./