

**Regular Civil Suit No.44/2009
Subhash & other Vs. Nishad & another**

ORDER BELOW EXH.No.145
(Passed on 24th of August, 2017)

The plaintiffs have moved this application to amend the plaint under Order 6 Rule 17 of C.P.C.

2. According to the plaintiffs, the defendant amended the written statement and inserted some material facts. Now, the plaintiffs want to deny the alleged facts. Therefore, the plaintiffs are seeking the permission to amend the plaint accordingly.

3. The Learned advocate for the defendants, Shri Lahabare opposed the application on the ground that the application came to be filed at the belated stage.

4. Having perused the application and the record, I heard the Learned advocates for the both sides. In view of the rival pleadings and the documents placed on record, following points are formulated for my determination and I record my findings thereon with reasons as follows :

| Sr. No. | <u>POINTS</u> | <u>FINDINGS</u> |
|------------|---|--|
| 1 | Whether the proposed amendment is justified ? | Yes |
| 2 | What order ? | The application is allowed as per final order. |

REASONS

As to point No.1 :

5. It is undisputed fact that the defendant amended their written statement and inserted the relevant facts in respect of the measurement of

the suit property. It is settled that every party to the suit has right either to admit or deny the facts mentioned in the pleading. It is also settled that whenever the pleading is amended, the opposite side must be given a chance of being heard. Thus having regard to these settled principles, I am of the considered opinion that the plaintiffs have right to amend their plaint in accordance with the facts mentioned in the written statement. Moreover, no prejudice would be caused to the either side, if this application is allowed. In short, in order to have a fair trial, this application needs to be allowed. In the result, I record my finding in affirmative for point No.1 and proceed to pass the following order.

ORDER

- (i) The application (Exh.No.145) is hereby allowed.
- (ii) The plaintiffs shall carryout the necessary amendment within the stipulated period and shall file the amended copy of the plaint.
- (iii) Costs in cause.

Ramtek
Date : 24.08.2017

(Sujitkumar C.Taide)
Civil Judge, Jr.Dn., Ramtek.

CERTIFICATE

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

Name of Stenographer

:- G. S. Dongardive

**Regular Civil Suit No.44/2009
Subhash & other Vs. Nisha and other**

ORDER BELOW EXH.No.145

(Passed on 13th of July, 2017)

By way of this application, the defendant No. 1 to 4 have sought the permission to cross-examine the plaintiff No.1 on the ground that on 24.03.2017 when the case was fixed for cross-examination of the said witness, the advocate for the defendant No. 1 to 4 could not attend the Court due to his important domestic work. So also, the defendant No. 1 to 4 were unable to appear before the Court due to their illness. Hence, they have moved this application.

2. The Learned advocate for the plaintiffs, Shri Fule opposed the application on the ground that the defendant No. 1 to 4 are trying to prolong the matter on the baseless grounds. Hence, he prayed to reject the application with costs.

3. Having heard the Learned advocates for the both sides, I perused the record. It transpires that the Learned advocate for the defendants had to attend the Tervi of his close relative. Thus the reason for his absence appears to be bonafide. This application is supported by affidavit and therefore, the facts mentioned in this application can be taken into consideration. In such circumstances, it is probable that the defendants might have suffered from illness. Moreover, the defendants have filed this application without any delay. Thus their bonafide intention to conduct the case is reflected. In short, the reasons for not conducting the case on the fixed date are bonafide. Thus in order to have a fair trial, the defendant No. 1 to 4 deserves to have a chance of being heard. In the result, I pass the following order.

Order

- (i) The application is allowed.
- (ii) The defendant No.1 to 4 are hereby allowed to cross-examine the plaintiff No.1.

Ramtek
Date : 13.07.2017

(Sujitkumar C.Taide)
Civil Judge, Jr.Dn., Ramtek.

