

ORDER BELOW EXH. 30 IN R.C.S. NO.183/2012

1] The plaintiffs have filed present application under Order 6 Rule-17 of the Civil Procedure Code for amendment in the pleading.

2] It is the contention of plaintiffs that during the search, they have found one document agreement of sale (*SaudaPavati*) dated 13/09/2005. Therefore, plaintiffs intended to amend their pleading to explain the said transaction. According to plaintiffs, the proposed amendment is essential for adjudication of the matter. Hence the present application.

3] Defendants contested an application by filing their say at Exh.34. They have specifically denied the contention in the application in toto. According to them, in spite of knowledge about the said document prior to filing of suit, the plaintiffs did not averred in their pleading. The proposed amendment will change the nature of the suit. The matter is for cross examination of the plaintiffs. Therefore, plaintiffs have no right to seek such type of amendment at such belated stage. On such grounds, defendants have prayed for dismissal of the application.

4] Heard learned advocates of both sides. Perused the citation filed by them. I have gone to the pleading and document on record.

5] It is the case of plaintiffs that the defendants are the owner of the suit property. They intent to sale it because, they want to

purchase the new convenient land. Madhav Ukhaji Morane, father plaintiff No. 1, 2, 4 and 5 shown willingness to purchase it. Accordingly, he entered into an agreement to sale dated 21/03/2009. The consideration of suit property was fixed of Rs.1,20,000/-. It was agreed that on or before 30/07/2009 the consideration amount was to be paid. The name of defendant No. 2 entered in to the revenue record. It was also agreed that defendant No.1 and 2 was to execute the sale-deed. Meantime Madhav expired. Thereafter, plaintiffs shown ready and willingness to perform part of contract, but defendants refused to execute the sale-deed. Therefore, the present suit for specific performance of agreement to sale dated 21/03/2009. Defendants contested the suit by filing the written statement. They have specifically denied that agreement to sale had been executed between them. According to the defendant No.1 is vagabond person, he is falling in the bad habit of drinking liquor. To fulfill the lust of drinking liquor, he obtained hand loan from the father of plaintiff No. 1 and 2 and executed one document on dated 13/09/2005 for the security of hand loan. Thereafter, defendant No.1 repaid the hand loan with an interest. Therefore, it is the contention of defendants that alleged document is not executed with the intention of the sale but for the security of hand loan. On such ground, defendants prayed for dismissal of the suit.

6] On the basis of pleading my learned predecessor judge framed issues which is at Exh. 23. Thereafter, plaintiff No.1 has filed evidence affidavit at Exh. 27 on dated 23/02/2015. Now the matter is fixed for cross examination of the plaintiff No.1. Meantime, plaintiffs have filed present application for amendment. Thus, it is clear that

after commencement of the trial, plaintiffs have filed the present application.

7] In the case of Antonio **Ferdino Varela Vs. Thereza Maria Angela Varela** (cited by defendants) reported in **2014 (5) Mh.L.J. 601**, the hon'ble Bombay High Court observed the consideration for decision of the amendment application as follows :

“While considering an amendment application, it is well settled law, it is not open to the Court to enter into the merits of the plea sought to be raised and the Court has to decide the application purely on the basis of the principles applicable to the amendment of the pleading contained in Order 6 Rule 17 of Civil Procedure Code. The relevant consideration could be, whether the amendment is necessary for deciding the real controversy between the parties, what is the stage of the proceeding when amendment application is filed, and if it is filed after commencement of trial, whether the plea could have been raised before commencement of the trial.”

(emphasis supplied)

8] Thus, considering the legal proposition, I found merit in the application. It is pertinent to note that by way of amendment plaintiffs trying to explain the previous transaction made between deceased Madhav and defendant no.1. As stated earlier, defendants have stated about the transaction dated 13/09/2005 in their written statement. Therefore the defendants were very well aware about the execution of document. However the plaintiffs were not the party to the said transaction, so they might be not aware about the previous transaction happened between their father and defendants. Therefore the plea of the plaintiffs that recently they have found the document seems to be satisfactory.

9] It is also pertinent to note that in order to decide whether

the transaction is money lending transaction or sale transaction, the document dated 13/09/2005 got utmost important. Therefore, the proposed amendment is essential for deciding the real controversy between the parties. It is also reveals that by way of proposed amendment there would not be change in the nature of the suit or it would adversely effect the defence of the defendants. Plaintiffs not bring the new case, but they intended to explain the previous transaction. Therefore the application is deserves to allowed. As the delay caused, defendants can be compensated by imposing the cost on the plaintiffs. Hence I pass the following order.

ORDER

1. The application is allowed subject to cost of Rs. 5,00/- be paid to the defendants.
2. The plaintiffs shall carried out the amendment in the 14 days from the date of this order.
3. The plaintiffs also directed to furnish the copies of amended plaint within 14 days from the date of this order as per rules.
(dictated and pronounced in the open court)

Date : 16-09-2015

(P. G. Tapadiya)
Jt. Civil Judge Junior Division, Satana