



ORDER BELOW EXH.44.

1. The Present application has been filed by the Plaintiff as per the provision of Order 6 Rule 17 of the Code of Civil procedure, 1908.
2. The present suit is filed by Plaintiff against defendants for Specific Performance of a contract and Permanent Injunction.
3. Despite of giving sufficient opportunity defendants failed to file say on this application. Therefore, **No Say order** has been passed against the defendants. Hence, application is proceeded without say of the defendants.
4. Perused the application. At first instance, the plaintiff prayed for correction in prayer clause in (f), in paragraph no. 9. The propose amendment is formal in nature and it will not cause any prejudice to the defendant. Therefore, the said amendment prayed by the plaintiff is permissible.
5. The plaintiff further prayed for amendment in a description of a suit property. The propose amendment is necessary to describe the suit property specifically. The said amendment is formal in nature and it will not cause any prejudice to the defendant. Therefore, the said amendment prayed by the plaintiff is permissible.
6. The plaintiff submitted that it was decided between the parties to agreement to sale dated 03/01/1985 that the expenditure for execution of sale deed will be equally incurred by the both parties and same was mentioned therein. If the defendant fail to give the amount of expenditure to the plaintiff then in consideration thereof, approximate land admeasuring 6 R of the defendants will be given to the plaintiff. The plaintiff submitted that mentioning this content in a plaint is necessary for the adjudication of

dispute between the parties and therefore he be permitted to amend his pleading and also prayed for a amendment to that effect in a prayer clause.

7. At present the matter is proceeding for the evidence of plaintiff. According to the O-6, R-17 parties are permissible to amend their pleadings at any stage of the proceeding but O-6, R-17 further provided that if the parties file application for the amendment after the commencement of the trial the plaintiff has to show his due diligence. In a present matter the plaintiff prayed that the content of proposed amendment could not mentioned previously in the plaint due to sight mistake. Here it is pertinent to note that the proposed amendment prayed by the plaintiff is necessary for the purpose of determining the dispute between the parties. The propose amendment will not cause any prejudice to the defendants. The defendants have ample opportunity to file written statement against the same amendment in the plaint. Moreover, the proposed amendment is not amounting to substitution or change in the nature of the suit. Also the defendants have not filed their say to the present application and challenge the application. Therefore, in such facts and circumstances in order to adjudicate the dispute between the parties, it would be appropriate to allow the proposed amendment in the plaint. Accordingly, I pass following order :

ORDER

- a) Application (EX.44) is hereby allowed.
- b) Plaintiff to amend the propose amendment in this application within the 14 days from the date of order.
- c) The copy of the amended plaint be served on the Defendants.

Date: 01.01.2020

Sd/-
(Smt. H.U.U. Patil)
2nd Jt. CJJ, Bhor, Dist. Pune

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

Name of the Steno : A.A Shaikh.

Court Name : Smt. H.U.U.Patil

2nd Jt.C.J.J.D, Bor, Dist. Pune.

Date :01/01/2019

Order signed by presiding officer on : 01/01/2019

Order uploaded on : 04/01/2019."