

ORDER BELOW EXH. 168 IN Spl.C.S. NO. 517/2011

1. This application is filed by plaintiff for amendment in plaint under Order 6 Rule 17 of Code of Civil Procedure.

2. Plaintiff contended that, he has filed this suit for specific performance of Agreement dated 22-04-2010 against defendant with respect to property described in Schedule A, B & C. During the pendency of suit some of the defendants who are owners of the property mentioned in Schedule A and B died, however, application to bring legal heirs on record came to be rejected by the predecessor of this court. Moreover, an issue of maintainability of suit under Order 7 Rule 11 of the Code of Civil Procedure is framed. Hence, whether Agreement is enforceable or not and terms and conditions incorporated are uncertain are not is based on merits. Plaintiff is entitled for specific performance and execution of Sale deed with respect to part of suit property and even in respect to proper which are subject matter of Agreement to Sale. Hence, they intend to incorporate para 16-A in the plaint. The proposed amendment will not change the nature of the suit and it is necessary to decide the real controversy between the parties and avoid multiplicity of proceedings. Hence, the application.

3. Defendant no.1 to 10 resisted this application and filed their reply at **Exh.173**. They contended that, the contents of application are false and frivolous. The suit was filed in the year 2011. After five years, plaintiff has filed this application for amendment which is time barred. The nature of suit will be changed. Hence, prayed that the application be rejected.

4. Defendant no.26 to 29 resisted the said application and filed their reply at **Exh.172**. They contended that, the court has framed issue of maintainability of suit. Both the parties have argued the issue at length

and after that the plaintiff has filed this application. They further contended that, the proposed amendment in para 16-A would have been incorporated at the time of filing of the suit. Plaintiff has not mentioned the reasons for the delay. Plaintiff has not taken proper steps to bring the legal heirs of deceased defendants on record. Further some of the defendants had died prior to filing of the suit. Unless the legal heirs of deceased defendant no.15 and 20 are brought on record, an executable decree cannot be passed. Hence, prayed that, application be rejected.

5. Considering rival contentions of both the parties following points arise for my determination and I record my findings thereon for the reasons mentioned below.

No.	POINTS	FINDINGS
1	Whether application is liable to be allowed ?	...Yes.
2	What Order ?	... Application is allowed.

:: REASONS ::

POINT NO.1. :-

6. Heard all the learned Advocates. Perused the record. This is suit for specific performance of Agreement executed between plaintiff and defendants. The Agreement to sale dated 22-04-2010 was executed between plaintiff and defendants with respect to property described in Schedule A, B, & C. During the pendency of the suit plaintiff came to know about death of defendant no.15 and 20. It is the contention of the defendants that, defendant no.15 and 20 died prior to the filing of the suit, while it is contention of the plaintiff that, they came to know about death of defendant no.15 and 20 after filing of the suit. Be it so, the application of plaintiff to bring legal heirs of defendant no.15 and 20 was rejected by my predecessor. In view of this rejection, plaintiff has filed this

application for amendment in plaint stating that, he is entitled for execution of Sale-deed with respect part of the properties or even in respect to and restricted to properties described in Schedule A. Admittedly, issue of maintainability of suit is framed and pending. Taking into consideration, the proposed amendment, I am of the opinion that, it will not change the nature of the suit, nor will cause any prejudice to other party.

7. But with regard to the delay caused, it is necessary to consider that, the application of the plaintiff to bring the legal heirs of defendant no.15 and 20 is rejected. In view of rejection the issue of maintainability of suit has arisen and the said issue of maintainability is pending. Defendant no.15 and 20 are also owners of the property of the suit Agreement to sale. In such circumstances, the proposed amendment needs to be allowed but at the same time considering the delay caused, by levying cost on the plaintiff, will suffice the purpose. Accordingly, I answer point no.1 in the positive and in answer to point no.2, I pass the following order.

:: ORDER ::

1. Application is allowed subject to costs of Rs.15,000/- (Rupees Fifteen Thousand only) to be paid to the defendants on or before next date.
2. Plaintiff is permitted to carry out amendment after payment of costs.
3. Plaintiff to file amended plaint within 14 days.

Panvel,
Date : 09-11-2023.

(Nayomi P. Pawar)
Civil Judge, Senior Division Panvel.