

MHRG040036652016



Order Below Exh. 25 in Spl.C.S. 42/2018

This is an application filed by plaintiff for amendment in the plaint. Defendant has filed its say vide Exh. 34.

2. The brief facts of the application are that, the name of the plaintiff has been wrongly stated as Sajan J. Bhojwani instead Sajan Jessaram Bhojwani (HUF) filed through Sajan J. Bhojwani Karta. The allotment letter dtd. 14/02/2012 issued by the defendant addressed to S.J. Bhojwani(HUF) and the allotment letter has been filed on record. Plaintiff has made payments to the defendant via bank account of Union Bank, the account holder being Sajan Jessaram Bhojwani (HUF). Receipts of payment issued by the defendant have been made in the name of Sajan Jessaram Bhojwani (HUF). The title and verification clause be amended as Sajan J. Bhojwani HUF filed through Sajan J. Bhojwani Karta proposed amendment necessary for the purpose of determining the delay questions in controversy between the parties. If the application would allowed, no harm loss or injury would be caused to the other side.

3. Defendant resisted this application contending that, application is filed after a considerable lapse of time since the filing of suit almost six years of time lapse as the suit was filed on 12/01/2018 and the application was filed on 23/10/2023. The plaintiff has not provided any satisfactory explanation for inordinate

delay. Allowing such an amendment at this stage would be prejudice to the rights of defendant and is contrary to the settled principle of law. The amendment sought by the plaintiff is not a mere correction of a typographical error but seeks to substitute the plaintiff from Sajan J. Bhojwani in his individual capacity to Sajan Jessaram Bhojwani (HUF) filed through Sajan J. Bhojwani as Karta. This amounts to a fundamental change in the nature and character of the suit which is impermissible at this stage of proceeding. The plaintiff has failed to exercise due diligence in filing the present application. The facts regarding the correct name and the capacity of the plaintiff there within his knowledge at the time of filing of suit the plaintiff can not be permitted to alter the foundation of the suit under the guise of a typographical error. The plaintiff has not establish any sufficient bona fide cause for seeking the amendment. The application is vague and does not disclose any compelling result warranting the exercise of application. The proposed amendment if allowed would cause serious prejudice to the defendant who has contested the suit based on the pleadings. Allowing such a change would make it necessary a fresh defence and render previous proceedings and evidence redundant. Such a substantive amendment changing the identity of the plaintiff is not permissible in law unless it is shown that it is necessary for the purpose of determining real question of law.

4. Ld. Counsel for plaintiff submitted that, proposed amendment is necessary to determine the real questions in controversy between the parties.

5. Ld. Counsel for the defendant submitted that, plaintiff has not established any sufficient bona fide cause for seeking the amendment and if it is allowed it would cause prejudice to the defendant and it would change a defence and render previous proceedings and evidence redundant.

6. On perusal of record and considering the arguments advanced by the parties it reveals that plaintiff has filed the present suit for possession, compensation and injunction. Plaintiff has filed present application for the amendment in the plaint on 03/10/2023. Proposed amendment will not change the nature of suit and it is necessary for deciding the case on merit. Hence in the interest of justice, I pass following order.

ORDER

Plaintiff is permitted to carry out the amendment in title clause as prayed.

Panvel

Date. 08/07/2025

(A.S. Badgujar)

2nd Jt. Civil Judge, Senior Division,
Panvel