

**ORDER BELOW EXH.30 (1)**

1. This an application under section 151 of the Code of Civil Procedure.

2. The plaintiff contended that the suit is filed for removal of encroachment. He has failed to file rough sketch map. It was brought to his notice by the defendants. Thereafter, he has filed the present application to allow him to file the rough sketch map of the suit property.

3. The defendant has filed say and contended that there is not satisfactory explanation for filing the rough sketch map at this stage. The plaintiff is trying to fill up the lacuna in the case. This cannot be treated as formal defect. Hence, the application be rejected.

4. Heard learned advocates for both the parties. Perused proceedings, application and say. The suit is filed for removal of encroachment. There is no rough sketch map as per Order VII Rule 3 of the Code of Civil Procedure. The Hon'ble Apex Court has held in catena of judgments that, if certain defects can be cured before it is too late, the trial Court with the intention of doing complete justice, can give such an opportunity to a litigant, rather than letting the litigation progress because remanding matter back to trial court from the appellate court would cause a severe loss of time, money and energy to the litigating sides.

5. Here, I would refer to the decision of Hon'ble Supreme Court in *Pratibha Singh Vs. Shanti Devi Prasad [2002 DGLS (SC) 1043]* wherein it was observed that "the plaintiffs ought to have filed map of the suit property annexed with the plaint. If the plaintiffs committed an error the defendants should have objected to promptly. The default or carelessness of the parties does not absolve the Trial Court of its obligation which should have, while scrutinizing the plaint, pointed out the omission on the part of the plaintiffs and should have insisted on a map of the immovable property forming subject matter of the suit..."

6. Considering the above discussion and case law, I came to the conclusion that without description of the suit property, it would be difficult to pass an effective decree in the suit for the removal of encroachment from the suit property. The defect is not fatal to the suit and it can be cured. Therefore, the defect needs to be cured and the application deserves to be allowed. On the other hand, the defendants needs to be compensated for the default of the plaintiff. Hence, I pass the following order:

**ORDER**

The application is allowed subject to cost of Rs.500/- to be paid by the plaintiff to the defendant.

Date: 11.02.2020

Place: Khalapur

Sd/-

(S.M.Gade)

Civil Judge, J.D., Khalapur.