

Order below Ex. 77 in Regular Civil Suit no. 28/18

The instant application is filed on behalf of Plaintiff inter alia seeking for amendment in pleadings - q's and addition some defendants.

2. It is submitted that the suit is filed for declaration of way which is acquired by plaintiff by way of Easement by prescription and easement by lost of grant and customary right. The application for interim relief was granted by this court in favour of plaintiff. However the order of this court was set aside by Honble District Court. The Honble District Court was pleased to award liberty to plaintiff for adding all the co-owners of relevant property and file fresh interim application. Accordingly the plaintiff has prayed for amendment with respect to addition of defendants who are other co-shares in suit property schedule B.

3. The application came to be resisted by defendant no. 1 at ex. 78. The said say is also adopted by defendant no. 2 vide paras at ex. 1. The defendants thus admit that the Honble District Court has granted permission to the plaintiff with respect to addition of parties. Hence it is their contention that the plaintiff is trying to

implead necessary pleadings under guise of addition of parties. They claim that plaintiff has intentionally mentioned similar address of proposed defendants, despite of the fact that they do not reside at that place and plaintiff knows their addresses. They state that the plaintiff ought to have provided correct addresses of defendants to be added. It is further contended that plaintiff is not clear with respect to his proposed amendment. He is trying to delete the pleading with as he may prove himself wrong. Lastly it is mentioned that the defendant had objected with respect to nonjoinder of necessary parties by virtue of written statement of law, as per them, the plaintiff has lost the right for such amendment.

4. The arguments are heard. It is apparent fact that the order of Hon'ble District Court is binding on both parties. It is not challenged. Thus the plaintiff is availing the liberty so granted by Hon'ble District Court. In such case, the defendants have no scope to resist plaintiff's instant application. So far as granting correct addresses of defendants is concerned, then rules

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received, it is difficult to agree with Defendants on that point. The suit is at very preliminary stage. The validity or legality of proposed amendment cannot be decided during deciding amendment application. Thus liberal approach is required to be followed while dealing amendment application. It is then to say, the plaintiff can amend such pleadings which are practically existing in his plaint. Thus the defendants will get opportunity to counter the amended pleading of defendants. Moreover as Hon'ble District Court has considered that all co-shares with respect to such property are required to be added, I do not find any point to reject the application of plaintiff. Hence I pass following order:-

- 5- Amendment application is allowed. The Plaintiff shall carry out amendment on or before next date. The plaintiff is also directed to produce copies of amended plaint for added defendants. Summons be also sent to defendants against whom suit proceeded ex parte.

*[Signature]*