

COMMON ORDER PASSED BELOW EXHIBIT 123 TO 126
IN RCS NO. 126/2015.

C.N.R.No.- MHSI-07000579-2015

This is a suit for mandatory injunction, perpetual injunction. The present application has been filed by the defendant no. 2 for the amendment of the contents of para one of the application at exhibit 43 filed for temporary injunction.

02] Heard both sides. Perused application and say.

03] It is submitted that predecessor of the defendant no.1 and 2 had previously filed one civil suit bearing RCS No.142/2003 in which four sides of the suit property were given. In the said matter, the predecessor of defendant no.1 and 2 had preferred appeal against the order passed below exhibit 5 and the said appeal was dismissed. The predecessor of defendant no.1 and 2 approached before the Hon'ble High Court by filing Writ Petition against the judgment of the District Court. The said Writ Petition was allowed and the matter was remanded to the District Court. Thereafter , fresh application for injunction was moved by correcting four sides of the property as per direction of the Honble High Court . Thereafter, the appeal no. 01/2004 preferred before District Court was partly allowed. As per the amendment done in four sides of the suit property new four sides were fixed. The defendant while filing application at exhibit 43 ought to have written down the amended four sides of the property but due to hurry and typographical mistake wrong four sides of the suit property have been written. The same mistake has been occurred in reply filed below exhibit 50 , written statement, exhibit 42 and counterclaim as well as in reply filed below exhibit 36. As such,

the defendant no.2 has prayed amendment in the contents of application, reply, counterclaim etc.

04] The plaintiff has strongly opposed all the application by filing reply and submitted that the application is false and illegal. The reason put forth for amendment is not just and proper. The reason submitted is not convincing considering over all facts and circumstances of the case. The application has been moved deliberately after the argument of the plaintiff was heard and the above mischief was brought to the notice of the Court. The applications are not filed in good faith and the amendment sought is going to change nature of the suit. Thus, the Ld. Advocate for the plaintiff has prayed for rejection of the application.

05] While considering amendment in the pleading, the Court has to see whether the amendment sought is necessary for final adjudication of the matter on merits. The nature of the amendment shall not cause change in the nature of the suit or it will not cause prejudice to the defendant in any manner. The present amendment sought is with regards to four sides of the property mention in various exhibit , application and counterclaim. As per submission of the defendant that due to typographical mistake wrong four sides have been written.

06] It is pertinent to note that in order to give finality to the disputes between the parties, it is must that correct description of the property should be on record. if the description of the property given is wrong , it will affect decision of the case. A dispute cannot be decided on the basis of merit without there being proper description of the property on record. The defendant

has submitted that four sides of the property have been mentioned wrong in his w.s, counterclaim, application as well as reply filed by him. Considering this aspect, it is clear that the amendment is with regards to four sides. If the four sides of the property are mentioned wrong, the said mistake is technical in nature.

07] As per submission of the defendant, the mistake occurred is technical one. While considering this submission, this Court is not required to go in to the merits of the amendment sought at this stage. Whether four sides as mentioned are right or wrong, this question will be open for the parties for adjudication. However, considering the nature of amendment sought, it cannot be said that the said amendment will cause prejudice to the other side or it will affect merits of the case. It is also worth to note that evidence in the matter is yet to be started. If the defendant is allowed to carryout amendment, the plaintiff will have opportunity to put his contention with regards to the amended portion. In view of these all facts and circumstances, the application for amendment need to be allowed. Hence, following order is passed.

:-ORDER:-

1. Application for amendments are allowed as prayed.
2. The defendant is allowed to carry out amendment as prayed in the application, reply, counterclaim and written statement as prayed.
3. The defendant to carryout amendment within

fourteen days from the date of this order.

4. The defendant to filed amended written statement and counter claim accordingly after making necessary compliance.

Date. 14.02.2023

(A.D.Tidke)

Place: Malvan

Civil Judge Junior Division, Malvan.