

ORDER BELOW EXH.108 IN RCS No.42/2011

1- The plaintiff has filed present application for amendment in plaint para no.1B, 3 to 6, 8, 12 and prayer clause 16. The plaintiff wants to give proper description of suit property 1B by way of this amendment application. Accordingly, he wants to give explanation about said property in para No.3 to 6, 8, 12. he has also wants to compensation amount from defendant No.1 and 2 in prayer clause 16. It is the contentions of the plaintiff that the proposed amendment is necessary for just decision of this suit and it will not change the nature of the suit. It is the contention of the plaintiff that said amendment is technical in nature and it will not cause any harm to defendants. Lastly, prayed that application be allowed.

2- The defendant Nos. 1/1 to 1/3 have resisted this application by filing their say at Exh.112. It is their contention that plaintiff has filed present application at belated stage. The reason given by plaintiff for proposed amendment is not tenable. The plaintiff has filed application only to prolong the matter. The proposed amendment will change the nature of the suit. Plaintiff has filed present application after closing his evidence by pursis (Exh.95). Lastly, prayed that the application be rejected with costs.

3. Defendant No.2 has resisted application by filing say at Exh.111. He has denied the contentions of plaintiff in toto. It is his

contention that plaintiff has already closed his evidence by passing pursis (Exh.95). Defendant No.1/1 has filed his evidence affidavit at Exh.102. Plaintiff has seek adjournment for cross examination on 12.12.2018 and 21.12.2018. In such situation, the application is required to be rejected with costs. If court comes to conclusion to allow the application, heavy cost may be imposed on plaintiff.

4- Other defendants have failed to file their say.

5- Heard learned advocate Mr. Mahajan for plaintiff. He has submitted that in larger interest of justice application filed at initial stage can be allowed by imposing just and appropriate cost before completion of defendants evidence. He has relied upon ratio laid down in the case of (1) Shantabai w/o Natthuji Thackre Vs. Vasant s/o Shyamraoji Wankhede reported in 2015(1) Mh.L.J.636. (2) Rajbahadur Jiyaram Yadav Vs. Prakash @ Pappu Jiyaram Yadav and others reported in 2016(2) Mh.L.J. 639. (3) Olga Rodrigues and others Vs. Christopher Pinto & others reported in 2018(1) ALL MR 520. (4) Vitthal Mhaskuy Mandhre Vs. Mugutrao Vishnu Sanas (D) through Lrs. 2019(1) ALL MR 314. (5) Vijaykumar Narayanrao Dixit Vs. Uday Griha Nirman Samsya Niwarak Sanstha Nagpur 2006(3) Mh.L.J.676.

6- On the contrary, learned advocate Mr. V.M.Kale for defendant

Nos. 1/1 to 1/3 has submitted that plaintiff has not filed present application with due diligence. Plaintiff has not assigned any good reason for filing present application at belated stage. Application is not tenable. He has relied upon the ratio laid down in the case of (1) Ajendraprasadji N. Pandey Vs. Swami Keshavprakashdasji N. & others (2006) 12 SCC page -1. (2) S. Rajendran Vs. K.Kanniah & others reported on <http://indiankanoon.org/doc/102887/>.

7- Considering the rival submissions and I have gone through above cited case laws. It is well settled that amendment should be allowed if an application is moved at a pre-trial stage and even at a later stage if the party wants to introduce the facts in respect of subsequent development as it would be necessary for final adjudication and to avoid multiplicity of proceedings.

8- Considering above legal position, it appears that suit is pending for cross examination of DW.1. It shows that the plaintiff has filed present application after commencement of the trial. On perusal of proposed amendment, it appears that plaintiff wants to give correct description of suit property 1B and accordingly he want to give explanation in para 3 to 6 and 8. Plaintiff has also want to additional relief against defendants in pursuance of his previous pleadings. However, the reason given by the plaintiff for filing present application at belated stage is not justifiable. But, in order

to decide the matter on merit and to resolve the dispute finally proposed amendment appears to necessary. If the proposed amendment is not allowed, then it will result in multiplicity of suits or proceedings. The proposed amendment is necessary and it does not change the nature of the suit. Considering the nature of amendment and its necessity, I am of the view that proposed amendment is required to be allowed. However, plaintiffs have not taken proper care to file present application at earliest stage. In such situation, the plaintiffs are liable to heavy cost. Hence, I pass following order.

ORDER

1. The application Exh. 108 is allowed subject to cost of Rs. 4000/- (Rs. Four thousand).
2. The plaintiffs are allowed to carry out proposed amendment in plaint within 14 days from the date of this order.
3. Amount Rs.2000/- to defendant No.1/1 to 1/3 and Rs.2000/- to defendant No.2 out of total cost of Rs.4000/- be paid within one month of this order, otherwise this order stands vacated.

Sd/...

Date : 16/02/2019

[Manoj C. Nepte]

Kavthemahankal.

Jt. Civil Judge Junior division
Kavthemahankal.