

ORDER BELOW EXH. NO. 44 IN R.C.S. NO. 143/2019

- 1) By this application, defendant Nos. 1 and 3 to 6 have prayed for permission to carry out amendment in written-statement (Exh. 26) vide Order 6 Rule 17 of C.P.C.
- 2) Precisely, in para No. 4 of written-statement it was mentioned by them that, house property was purchased by defendant Nos. 4 and 5 in the name of defendant No. 2. However, now they want to mention that, said property was purchased by defendant Nos. 4 and 5 in the name of plaintiff on 21/11/1995. Thereafter, the plaintiff sold it to defendant No. 2 on 10/07/1997. Thereafter, defendant Nos. 4 and 5 have constructed two storey building on said place.
- 3) By filing say (Exh. 48), the plaintiff has opposed the application contending that, said building is not within jurisdiction of this Court. Said building is subject matter of suit pending at Thane. Said building is not subject matter of present suit. Therefore, there is no need of amendment sought by the defendants.
- 4) Heard both sides. Perused the record. Suit is for partition and separate possession. An agricultural land situated at village Shetfal is subject matter of the suit. Plaintiff and defendant Nos. 3 and 5 are brothers. While defendant Nos. 1 and 2 are their parents. Defendant No. 6 is son of defendant No. 3. Already issues are framed and plaintiff has submitted his evidence affidavit. Thereafter, he was cross examined by the defendants. However, it is not yet completed. Mean time, the defendant Nos. 1 and 3 to 6 have moved present application. No doubt, said house property mentioned in para

No. 4 of written-statement is not subject matter of present suit. However, it is contention of defendants that, it was purchased by defendant Nos. 4 and 5 from their own income and just to claim share in said property, plaintiff has brought present suit.

5) It appears that, the defendants have inadvertently mentioned that, said house property was purchased by them in the name of defendant No. 2. It further appears that, inspite due diligence they could not ascertain said mistake. Now, they want to make correction that, it was nothing but a hut and it was purchased by them in the name of plaintiff. At this stage it is not necessary to consider merits and demerits of proposed amendment. However, it appears that, said amendment is necessary for determination of real controversy. Such amendment would not cause change in nature of suit. Therefore, it appears just to allow the defendants to carry out amendment as sought. However, for delay the plaintiff requires to be compensated. Hence, I pass following order ;

O R D E R

1. Application (Exh. 44) is allowed subject to cost of Rs. 3000/- (Rs. Three Thousand Only) payable to the plaintiff on or before next date.
2. Defendant Nos. 1, 3 to 5 to comply the cost and carry out amendment in their written-statement as prayed and submit copy of amended written-statement immediately on next date for Court purpose and also for the plaintiff.
3. Cost in cause.

Date: 03/04/2024.

(P. G. Mahalankar)
Jt. Civil Judge, J. D., Mohol.

CERTIFICATE

I affirm that, the contents of this PDF file of Judgment/Order are same word to word as per the original Judgment/Order.

Name of Stenographer	: V. A. Dange
Court	: Jt. C.J.J.D., Mohol
Date	: 03/04/2024
Judgment/Order signed by the Presiding Officer	: 03/04/2024
Judgment/Order Uploaded on	: 04/04/2024