

MHST160000102021



ORDER BELOW EXH.38 IN REG. CIVIL SUIT
NO.106/2021
(Passed on 12/10/2021).

This is an application filed by plaintiffs for amendment of plaint as per Order-6, Rule-17 of Code of Civil Procedure (In short C.P.C).

02. The plaintiffs have submitted that, they have filed this suit for declaration of easement and perpetual injunction. However in this suit, one typographical mistake was committed at the time of typing the plaint. The plaintiffs were intending to type the phrase “ defendant No.1 and 7”. But, due to typing mistake, a phrase was typed as “defendant No. 1 to 7”. The same mistake has been repeatedly committed at the time of typing the entire plaint. Therefore, the plaintiffs are seeking the amendment by replacing the phrase “defendant No.1 to 7” with phrase “defendant No. 1 and 7”. Plaintiffs further submitted that, this is a typographical mistake and it will not change the nature of suit. The amendment is necessary to determine the real controversy between the parties. Therefore, the plaintiffs have filed this application for amendment of plaint.

03. The defendants have filed the pursis at Exh.41 and adopted the say filed at Exh.35. They submitted that the

contents in the application are false and misleading. They submitted that, no cause of action took place to file this suit. They submitted that, the nature of suit will be changed and the cause of action will be replaced by the proposed amendment. Therefore, they prayed for rejection of the application.

04. The learned advocate for plaintiff argued that the typographical mistake was committed at the time of typing the plaint. This mistake is unintentional and therefore the amendment is necessary. On the contrary, the learned advocate for defendant argued that the cause of action shown by the plaintiff in the plaint will be entirely replaced by the proposed amendment. The plaintiff has stated in plaint para 9 that the defendant No. 1 to 7 started to dig the pits in the suit property. However, now the plaintiffs are going to say that only defendant No. 1 and 7 started to dig the pits. Therefore, the presence of defendant No 2 to 6 will be in dispute. Therefore, the proposed amendment can not be allowed.

05. I perused the plaint and written statement. On perusal of plaint, it is seen that the plaintiffs are seeking the relief against the defendant No. 1 to 7 and in the entire plaint, a phrase “defendant No. 1 to 7” has been repeatedly used including the cause of action para. However, it has been submitted by the plaintiff that there is typographical mistake and therefore the phrase “defendant No. 1 to 7” was wrongly typed. Considering the affidavit of plaintiff, one

may believe that it is a typographical mistake. The word "to" needs to be replaced with word "and" in the phrase. What will be the effect of amendment can be considered during the hearing of the suit. The suit is in its early stage. Hearing has not been commenced. Therefore, considering the contentions in the application and the nature of proposed amendment, the application deserves to be allowed. Therefore, I pass the following order:-

ORDER

1. The application Exh. 38 is allowed.
2. The plaintiff shall carry out the proposed amendment as per application Exh.38 and submit the amended copy of the plaint within 14 days from today.
3. No order as to cost.

(D.R.Mali.)
2nd Jt. Civil Judge, Jr. Dn.,Wai.

Date : 12/10/2021