

R.C.S. No.99/2021

Sandesh & Ors. Vs. Vinayak & Ors.

ORDER BELOW EXH. 33

Plaintiffs filed this instant application under Order VI, rule 17 of the Code of Civil Procedure to make amendment in the suit. I read an application and the reply filed by defendants at Exh. 35. Perused the entire record. Heard the learned counsel for plaintiffs Adv. Shri. S.S. Satbhai. The learned counsel for defendants Adv. Shri. P.R. Barsawade is absent when called. Defendants are also absent when called.

2. On perusal of record, it appears that plaintiffs filed this suit against defendants for the removal of encroachment and perpetual injunction. Thereafter, defendants filed the written statement at Exh. 26. Subsequently, plaintiffs filed this instant application and submitted that during the pendency of the suit the defendant encroached upon 600 Sq.feet land belongs to the plaintiff. The defendant also erected shed in 300 Sq.feet land and the defendant has taken the possession of the suit land. Now, the plaintiff wants to add in the plaint that the defendant encroached upon 154 Sq. Meter land of City Survey No.261. The plaintiff also wants to add in para No.1A that the defendant erected shed in 300 Sq. feet land of City Survey No.261. It is submitted by the plaintiff that the plaintiff filed this instant application before the commencement of trial. The amendment claimed by the plaintiff is appears to be necessary. Therefore, the plaintiff prayed to allow an application and to grant permission to the plaintiff to make an amendment.

3. On the contrary, the defendant filed the reply at Exh. 35 and submitted that the nature of the suit will be change, if the amendment application is allowed. The contents of the instant application has been denied by the defendant. Therefore, the defendant prayed to reject the application.

4. It appears to my notice that the plaintiff filed this instant application before framing issues. The evidence of the plaintiff is not commenced till today. The plaintiff has filed this instant application before the commencement of trial. The plaintiff wants to add about the encroachment made by the defendant. The plaintiff already filed the suit for removal of encroachment. The plaintiff also claiming about the possession of 300 Sq.feet land in which the defendant erected the shed. The plaintiff is claiming the relief of possession by this amendment application. Even, if it is so, the plaintiff has filed this application before the commencement of trial. Under these circumstances, it is necessary to allow the plaintiff to make amendment in the plaint. I, found substance in the application. Accordingly, I proceed to pass the following order.

ORDER

1. The application is allowed.
2. The plaintiff is permitted to make amendment in the plaint as claimed till next date, otherwise this application shall automatically stands rejected.
3. The plaintiff to pay necessary Court fees regarding the said amendment.

4. The plaintiff is further directed to file amended copy of
plaint after its incorporation.
5. Both the parties are directed to take note of it.

Vaduj.
Date: 06.09.2022

(D.D. Fulzele)
Civil Judge Sr.Dn., Vaduj.