



ORDER PASSED BELOW EXH.12 IN R.C.S. NO.82/2023

(CNR No. MHWS02000431-2023)

Hari Dawand Vs. State of Maharashtra Thr. Collector, Washim & Anr.

1] The plaintiff has filed this application under Order 6 Rule 17 of the Civil Procedure Code, 1908 (for short 'C.P.C.') for amendment of the plaint.

2] **Contents of this application, in nutshell, are as follows :-**

While instituting the suit, the plaintiff has mistakenly described the suit property as Malmatta No.402, instead of Malmatta No.403. The plaintiff has, thus, prayed that he be permitted to substitute Malmatta No.403 in lieu of Malmatta No.402. According to the plaintiff, the proposed amendment is of formal nature & however, it will not change the nature of the suit. With this, the plaintiff has prayed that this application be allowed.

3] Defendants have filed their say on overleaf of this application. They have stated that this application is not tenable as the plaintiff has not filed on record any documentary evidence to show that the property bearing Malmatta No.403 is in his possession. With this, they have prayed that this application is liable to be rejected.

4] I have heard Ld. Advocate Mr. Jadhav for the plaintiff & Ld. A.G.P. Mr. Kaloo for defendants at considerable length, and have gone through record of the suit.

5] Before proceeding any further, I shall at the threshold mention that the proviso appended to Order 6 Rule 17 of the C.P.C. virtually prevents an application for amendment of pleadings from being allowed after commencement of the trial, unless the Court is satisfied that in spite of due diligence, the party could not have raised the matter before commencement of the trial.

6] Reverting back to the suit at hand, it is seen that the trial of the suit has not yet been commenced. Therefore, the aforesaid proviso cannot be an obstacle in allowing this application. It is pertinent to note that the plaintiff has filed on record assessment extract of Malmatta No.403. Upon its perusal, it is seen that the plaintiff is in possession of the property bearing Malmatta No.403. Therefore, in my considered view that the proposed amendment appears to be of formal nature, it will not change nature of the suit & however, it is necessary to determine real question in controversy between parties to the suit. Holding so, I am inclined to allow this application. With this, I proceed to pass following order -

ORDER

- 1] Application Exh.12 is allowed.
- 2] The plaintiff shall carry out the necessary amendment, more particularly described in an application Exh.12 itself, till next date ; and shall supply copies of amended plaint as early as possible.
- 3] No order as to costs.
- 4] Parties to the suit shall take note of this order.

Washim.
Date - 07/08/2024.

(S.S.Ubale)
Civil Judge, (Sr.Dn.), Washim.

CERTIFICATE

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

- 1) Name of Stenographer :- S. P. Kale (Stenographer G-III)
- 2) Name of Court :- Civil Judge (S.D.), Washim.
- 3) Date :- 07/08/2024
- 4) Order signed by the
presiding officer on :- 07/08/2024
- 5) Order uploaded on :- 07/08/2024