

**ORDER BELOW EXH.49 in RCS No. 6/2014**

(Passed on 28/11/2022)

1. This application has been filed by the plaintiff under Order 6 Rule 17 r/w with section 151 of CPC seeking amendment of plaint.

2. Learned advocate for the plaintiff has submitted that the plaintiff has filed the instant suit for the relief of perpetual injunction. And, during pendency of suit plaintiff had filed an application below Exh. 41 for amendment of plaint which came to be allowed by the Court by order dated 11.11.2019. Accordingly, the plaintiff made an amendment in the plaint. However, due to inadvertence title of suit remained to be amended. As such, the plaintiff had also prayed for mandatory injunction, but in the title clause of the plaint word mandatory injunction has not been inserted by way of amendment. So also, no necessary amendment had been carried out in para No.11 regarding the valuation of the suit.

3. Lastly, it is submitted that the proposed amendment is expedient for the proper adjudication of the matter and same is not prejudicial to the interest of either of party. If amendment is not allowed then the plaintiff would suffer an irreparable loss which could not be compensated in terms of money. Hence, prayed to allow the application.

4. Application came to be the strongly resisted by defendants by filing their Say below Exh.49. Wherein, it is contended that, present application is not maintainable as such plaintiff has willfully and deliberately not carry out the amendment as was allowed by order below Exh.41. It is further contended that, the proposed amendment is beyond period of limitation. Therefore, present application is liable to be rejected with costs.

5. I have heard both sides. Perused the application and say so also, I have gone through the record.

6. Record shows that the application for amendment in the plaint was allowed by my learned predecessor below Exh.41 on 11.11.2019. Thereby, plaintiff was allowed to amend the plaint in order to incorporate relief of mandatory injunction. Accordingly, the plaintiff carry out the said amendment and supplied amendment copy of plaint on 17.01.2020 in the Court. However, it is seen that, in the title clause only relief of permanent injunction has been mentioned. So also, no amendment has been carried out in para No.11 of the plaint. Therefore, now, the plaintiff is seeking to amend the plaint accordingly.

7. It is admitted that the plaintiff had already granted leave to amend the plaint vide order below Exh.41. But, due to inadvertence he did not carry out the amendment in substance. Therefore, in order to rectify his mistake present application has been filed. In my considered view, the proposed amendment is bonafide in nature and will not change the nature of suit if permitted. However, at the same time the plaintiff needs to be saddled with some costs for his inadvertence. Since, costs follows event. Hence, I pass following order-

**ORDER**

1. Application Exh. 49 is allowed subject to costs of Rs. 500/- (Five hundred Rupees only)each defendants.
2. The plaintiff is directed to carry out the proposed amendment within 14 days from today.
3. Parties to note and comply accordingly.

Date :- 28/11/2022

**( M. H. Haque )**  
Jt. Civil Judge Junior Division  
Karanja (Lad).

**CERTIFICATE**

I affirm that the contents of this P.D.F. file Judgment/  
Order are same word to word as per the original order.

Name of Steno. :- K. A. Paraswai (Stenographer-3)

Court Name :- Jt. Civil Judge (Jr.Dn.) and  
J.M.F.C., Karanja. Dist. Washim.

Date :- 28/11/2022

Order signed by the :- 28/11/2022  
presiding officer on

Order uploaded on :- 29/11/2022