

SMCST/8706/2003

ORDER

Order passed below Exh.67 in H.R.P. Suit No.8706/2003

Shri Z. P. Shaikh, Learned Advocate for Plaintiffs.

Shri R. R. Deliwala, Learned Advocate for Defendants.

Coram: Shri K. S. Makhija, Judge.

Heard. This Application is preferred by the plaintiff for seeking amendment of the plaint under Order 6 Rule-17 of Code of Civil Procedure. The defendant has filed reply to this application at Exh.70. It is the case of the plaintiff that the lease-deed dated 25/7/2000 was for three years i.e. up to 25/7/2003, and as such the plaintiff trust has become entitled to get possession after the expiry of the lease period. For this purpose they are asking for amendment in the plaint including the relief clause.

In the case of Shanabhai Maganbhai Patel vs. Bhagwandas Rewabhai Patel reported in 1990 (1), GLH at page 403, Hon'ble Gujarat High Court while interpreting

the provisions of Order-6 Rule-17 Code of Civil Procedure has laid down that if the amendment is necessary for resolving the real dispute between the parties, it should not be refused. As far as the facts and merits of this case are concerned, the suit is for rent and possession. The amendment as prayed for does not change the nature of the suit nor introduce a new cause of action since the suit remains a suit for rent and possession after the amendment as sought. It does not introduce any inconsistent or mutually destructive plea. The defendants have been resisting the applications on the merits of the case, which has to be decided at the time of final hearing. In my humble view entire case factually has to depend on the meaning and interpretation of the lease deed dated 25/7/2000 executed between the parties. I am therefore passing order in the interest of justice:-

ORDER

The amendment application is allowed. The amendment be carried out within two weeks hereof and copy of the amended plaint be filed in this court within the aforesaid period of two weeks. The defendants shall file their written statement to so amended plaint within two weeks if so

desired after the amended plaint is filed. Cost to be cost in the cause.

Pronounced in Open Court today i.e. 15th February 2013.

Ahmedabad.

Date: 15.02.2013.

(K. S. Makhija)

Judge,

Small Cause Court No.9.

Ahmedabad.

M.K.Rathod.