

Order 23

16.4.24

Today is fixed for hearing the application u/o 6 Rule 17 read with section 151 CPC filed by the plaintiff on 9.2.24.

Plaintiff, defendant nos 1 and 2 as well as defendant nos 3 to 5 file separate haziras. Plaintiff files a petition praying for adjournment of P.hearing of this suit. Defendant nos 1 and 2 file WO against the application for amendment. Copy has been served. Objection has been noted.

Heard the Ld. Advocates for all the sides.

Perused the application whereby the plaintiff has prayed for passing necessary order to amend the plaint in the manner indicated in schedule to the said application mainly for the purpose of rectifying the area of the suit premises as described in the body and schedule of the plaint on the ground that such mis-description of the area of the suit premises has taken place due to bona fide mistake and / or inadvertence.

The defendant nos 1 and 2 through their WO have contested the said application praying for rejection of the same mainly on the ground that due to existence of the said alleged mistake in the body of the injunction application, question of amendment of the plaint does not arise.

It appears from the record that the instant suit for declaration, permanent injunction and other consequential reliefs has been brought by the plaintiff claiming his tenancy right in respect of the suit premises with the allegation that the defendants are trying to raise illegal construction beyond the sanctioned municipal building plan and thereby disturbing the possession of the plaintiff. The plaintiff has provided the area of the suit premises to be 138 sqft. However now he intends to have the said area replaced by the figures 152 sqft attributing the cause for the same on account of bona fide mistake and / or inadvertence.

In view of the above position the proposed amendment appears to be formal in nature and if the same is allowed there will not be any change in the nature or character of the suit nor will the same cause any injury or prejudice to the defendants. But the same appears to be essentially necessary for providing the actual area of the suit premises in the body and schedule of the plaint. It may be a fact that the incorrect area of the suit premises still exists in the body and schedule of the injunction application but the same does not in any way create any complication nor the same amount to any admission in view of the fact that the injunction application has already been rejected on contest and as such there is no scope to effect any amendment thereof like the proposed amendment of plaint. The evidence of this suit has not also as yet commenced.

Considered as such I am inclined to allow the prayer for amendment.

Hence, it is

Ordered

that the application of the plaintiff dtd 9.2.24 u/o 6 Rule 17 read with section 151 CPC is hereby allowed on contest treating the same to be a part of the original plaint. Let the plaint be amended accordingly.

Plaintiff is directed to submit amended copy of plaint after serving copy thereof upon the defendants by 15.7.24 . The defendants are at liberty to file additional WS if any in the meantime.

D/c by me

Judge

Judge 2nd Bench