

## HIGH COURT OF CHHATTISGARH, BILASPUR

## Order Sheet

**FA No.82 of 2016**Kishan Lal Arora **Versus** Pramod Kumar Agrawal

10/05/2016	<p>Shri H. B. Agrawal, Sr. Advocate with Shri B. L. Parakh, Advocate for appellant.</p> <p>Shri Ashish Surana, counsel for respondent No.1 &amp; 2.</p> <p>Heard on I.A.No.1, an application for amendment.</p> <p>Learned counsel for appellant argued that amendment of plaint has become necessary in view of recent pronouncement of the Supreme Court in the case of <b><i>Union of India and others vs. Vasavi Co-op. Housing Society Limited and others, AIR 2014 SCW 580</i></b>, no decree of declaration can be granted on the plea of adverse possession that it could only be used as shield and not as sword. He submits that by way of abundant caution, amendment in the relief clause has been proposed to make it more explicit that the plaintiff is seeking decree for protection of easmentary right based on possession.</p> <p>On the other hand, learned counsel for respondents No.1 &amp; 2 opposed the prayer and submits that the amendment is not necessary. Legal position with regard to claim based on adverse possession, is a matter of consideration by the Courts and the amendment sought on this aspect is unnecessary. On the second part, it is submitted that the plaintiff having already made extensive pleadings and sought relief in respect of easmentary right, the amendment sought is also not necessary.</p> <p>After having gone through the contents of application and relief sought therein, I find that as far as claim of easmentary right is concerned, this claim has already been raised by the plaintiff in the plaint and in the relief clause of the plaint. The basis of such claim is a matter of pleadings which has already been made in the plaint.</p>	

Therefore, no such amendment is necessary.

As to whether the parties are entitled to decree of declaration based on adverse possession is an issue of law.

In view of above, the application is rejected.

List this matter along with FA No.83/2016 after summer vacation.

Sd/-

**Manindra Mohan Shrivastava**

Judge

Tumane		
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