

Civil Procedure Code, 1908 (V of 1908) - S. 96 read with Order 41 R. 31 - In first appeal affidavit filed without amendment - Affidavit in a First Appeal by which virtually without submitting any application for amendment of the plaint under Order VI Rule 17 CPC - High court straightaway relied upon the affidavit without amending the plaint and the pleadings - Is wholly impermissible under the law.

Held, Therefore, such a procedure adopted by the High Court is disapproved - Before the High Court, in first appeal, plaintiff filed an affidavit stating that he is now ready and willing to get the sale deed executed with respect to the property with tenants and unfortunately, the High Court relying upon the affidavit in the first appeal considered that as now the plaintiff is ready and willing to purchase the property with tenants and get the sale deed executed with respect to the property in question with tenants, the High Court has allowed the appeal and decreed the suit for specific performance - Aforesaid procedure adopted by the High Court relying upon the affidavit in a First Appeal by which virtually without submitting any application for amendment of the plaint under Order VI Rule 17 [CPC](#), the High Court as a First Appellate Court has taken on record the affidavit and as such relied upon the same - Such a procedure is untenable and unknown to law - First appeals are to be decided after following the procedure to be followed under the CPC - The affidavit, which was filed by the plaintiff and which has been relied upon by the High Court is just contrary to the pleadings in the plaint - There were no pleadings in the plaint that he is ready and willing to purchase the property and get the sale deed executed of the property with tenants and the specific pleadings were to hand over the peaceful and vacant possession after getting the tenants evicted and to execute the sale deed - The proper procedure would have been for the plaintiff to move a proper application for amendment of the plaint in exercise of the power under Order VI Rule 17 CPC, if at all it would have been permissible in a first appeal under Section 96 read with Order XLI CPC

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