

THE COURT OF MUNSIF, SUB-DIVISIONAL CIVIL COURT, PIRO.**DISTRICT- BHOJPUR AT ARA.**Title Suit No. 17 of 2016

Sumati Devi

V.

Paarvi Devi

Date of Order or Proceeding	Order with the signature of the court	Office action taken with date
03.09.22	1. The present case-record is fixed today for order on two pending petitions, one petition dated 11.06.2022 filed on behalf of plaintiff under Order 6 R. 17 r/w 151 of the CPC and in its reply, a rejoinder has been filed on behalf of defendant on 27.08.2019. Another petition dt.11.06.2022 has been filed on behalf of plaintiff under Order 26 R. 10A of the CPC and in its reply, a rejoinder has been filed on behalf of defendant on 27.08.2019. 2. Ld. Counsel for Plaintiff vide petition filed under Order 6 R. 17 r/w 151 of the CPC has submitted that some words have been missed to be mentioned in the plaint which required to be amended. That only new khata and khesra was mentioned in the plaint while reference of its old khata & khesra has been left. Further it has been stated that the amendment is of formal nature which doesn't affect the nature and scope of the case and hence amendment is necessary in the interest of Justice. Plaintiff has stated that following proposed amendment is required in the plaint which is reproduced in verbatim. 3. Defendant vide his rejoinder dated 11.06.2019 has opposed the petition of the Plaintiff by stating that the present petition is not entertainable in eye of law and maintainable. Further it has been stated that there was no reference of old khata & khesra in the plaint. It is also stated that plaintiff has filed this encroachment suit in which there is no requirement of new and old survey. Further it has been stated that plaintiff has not mentioned in his petition that in what direction, the suit shall be	Cont.

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proceeded after inserting old khata and khesra in the plaint and what is its requirement. It is further submitted that such amendment will change in the nature of the case and therefore it has been prayed to this court to dismiss the present petition with cost.

4. This Court heard both sides on Dated 01.09.2022. Perused the Case Record sincerely. Upon perusal it appears that present suit is pending at the stage of Plaintiff Evidence and one plaintiff witness has been examined and at this stage the present amendment petition has been filed by the Plaintiff. In the present petition plaintiff has sought for insertion of old khata and old khesra in reference to new khata and khesra in the Plaint. Plaintiff has stated that omission to mention the same has done due to mistake. The objection raised by defendant appears not tenable.

5. As regarding the proposed amendment filed by Plaintiff this Court is of considered view that the proposed amendment human error which is very much a natural reason and further the said omission of mentioning old khata and khesra would become fatal for the case of the Plaintiff. Further Petition under order 6 Rule 17 CPC can be moved at any time as per law and can be allowed for determining the real question in controversy. The said petition has been well supported with an affidavit and verification of the same has been done by plaintiff. In considered opinion of this court, the proposed amendment is essential for determination of real question in controversy and further it also do not change the nature of the suit. Further in my considered opinion the reason assigned by Plaintiff is well explained and satisfies the condition mentioned in proviso of the Order 6 Rule 17 CPC.

6. Considering the said fact present Petition is allowed at a cost of Rs.500/-with a liberty to Defendant to file additional WS within prescribed period as per law in the light of the present amendment. Plaintiff is further directed to amend the Plaint accordingly within fourteen days as per law.

7. Plaintiff while pressing another petition dated 11.06.2019 filed under 26 R. 10A of the CPC has submitted that plaintiff has filed this case against defendant for encroachment over suit land for which a Survey Knowing Pleader Commissioner is essential for scientific measurement of suit land by which it can be determined what portion of land belongs to plaintiff and defendant. It is submitted that she is ready to pay fee in this regard and inter-alia prayed to appoint Commissioner in this case upon the following points: -

- (i) Pleader Commissioner prepare a sketch map of CS khata no. 204 CS plot no. 1366 corresponding to RS khata no. 1167 RS plot no. 2199, area 4 decimel situated at Sundar tola P.S.- Piro, Dist- Bhojpur and also show its existing

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condition;

- (ii) Pleader Commissioner also show the encroachment area encroached by the defendant over C.S. plot no. 1366 and RS plot no. 2199 and also show existing condition over CS plot no. 1366;
- (iii) Pleader Commissioner also report about the disputed land which is found on the spot; and
- (iv) Pleader Commissioner also report and suggested by plaintiff or his lawyer on the spot.

8. On the other Ld. Counsel for defendant, while pressing his rejoinder dt. 27.08.2019 bearing copy received to plaintiff, in relation to aforesaid petition vehemently opposed the assertion of plaintiff and submitted that aforesaid petition is not maintainable. It is further submitted that there is no reference of old khata & khesra in the plaint while plaintiff is looking to get appointment of commissioner on the same. Further submitted that plaintiff has also given an amendment petition for the same which is also not maintainable. Since there is no reference of old khata & khesra in said petition, hence there should not be appointment of commissioner in the case and prayed to dismiss the same.

9. This Court heard both sides on Dated 01.09.2022. Perused the Case Record sincerely. It is very much apparent on the record that plaintiff has brought this suit for encroachment and the same issue can be effectively decided by the court after shaving report about scientific measurement of suit land and ss such, appointment of Survey Knowing Pleader commissioner appears necessary in this case to decide rights of the parties. So far as the question raised by the defendant upon reference of old khata and khesra in the plaint, it is clear from the aforesaid order allowing amendment in the plaint is being passed today and hence the said objection is not of much importance. Considering the aforesaid facts, the aforesaid petition dt. 11.06.2029 is hereby allowed in the interest of justice.

10. Plaintiff is directed to deposit the Survey Knowing Pleader Commissioner's fee of Rs. 1500/- in Nazarat. After getting receipt of the same, Office is directed to immediately issue a Letter of Request to Ld. District & Sessions Judge, Bhojpur at Ara for appointment of Survey Knowing Pleader Commissioner in this case.

Put up on 17.10.2022 awaiting for order on nomination of Survey Knowing Pleader Commissioner and further proceeding in this case.

By Order

Munsif, Piro.