RCS/17/2013 **ORDER**

IN THE COURT ADDITIONAL SENIOR CIVIL JUDGE,
AT : ANKLESVAR
REGULAR CIVIL SUIT NO. 17 OF 2013.

Plaintiffs:

1. PRAKASHCHANDRA NATWARBHAI MODI
   13, RAMVATIKA SOICETY,
   HANSOT ROAD,
   AT: TA: ANKELSHWAR, DIST: BHARUCH.
   GUJARAT.
2. GEETABEN PRAKASCHANDRA MODI
   13, RAMVATIKA SOICETY,
   HANSOT ROAD,
   AT: TA: ANKELSHWAR, DIST: BHARUCH.
   GUJARAT.

V E R S U S

Defendant:

1. ESSAR POWER TRANSMISSION COMPANY LTD.,
   A/8, MATRUCHHAYA CHAMUNDRA MATA'S TAMPLE,
   ZADESHWAR ROAD,
   AT: TA: DIST:BHARUCH.
   GUJARAT.

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Appearance:
SHRI N.K.MAJMUDAR For Plaintiff 1.
SHRI B.V.RANA For Plaintiff 2.
SHRI R.R.MODI For Defendant.

ORDER BELOW EXH.18.

01. This application is filed by the plaintiffs for amending the plaint as per Order-VI Rule-17 of C.P.C. The short facts of this application is as under.

02. The plaintiffs are the owners & occupiers of the land bearing Survey No.230 admeasuring 01-Hector 40-Are & 62 Sq.mtrs,situated at Vill.:Mandva Bujarg,Tal:Ankleshwar Dist.:Bharuch. The said land is very high quality fertile land and different crops have been taken by the plaintiffs. The present defendant had tried to install electric

pole and had tired to encroach upon the land without consent of the plaintiffs, therefore, the present plaintiffs have preferred the present suit against the defendant. Then after the present defendant has been served summons/notices and written statement/reply has been filed by the defendant. During the pendency of the suit, the development has taken place, as the concerned Contractor/Officers etc.,of the defendant company has committed irregularity & illegality as recently on 06/02/2013. Some of the Officers of the defendant had entered upon the agricultural field of the plaintiffs & have installed the electric pole/electric tower for installation of 400KV line & have commenced further work of installation of 400KV line without the consent of the plaintiffs. That the electric pole/tower which has installed in the field i.e. Survey No.230 is having its No.0229 & total area beneath the 4 poles of the electric tower comes to 13.5X13.5sq.mt which comes to 182.25sq.mts i.e.1961sq.ft,that even foundation beneath the land is covering area admeasuring 75ftX75ft=625sq.ft. The aforesaid work has been done & completed during the pendency of the suit absolutely illegal & unauthorized manner & without consent of the plaintiffs, therefore, the present application has been preferred & plaintiffs pray for addition of Para 2A,2B & 2C after Para 2 in the main suit & also prayed in para 4 that,the plaintiffs state that in view of the aforesaid subsequent development/events which have taken place,the plaintiffs also crave leave to add/amend the following prayers clause as para-____ after para-____ in the main suit.

"-A)

The Hon'ble Court may be pleased to declare that

the defendant, their servants, officers had no right or authority to execute the work for carrying-out the founda -tion admeasuring 75ft.X75ft.beneath the land in question bearing Survey No.230 & had no authority to install four poles/400 KV Electricity line Tower which covers the land admeasuring 13.5mtrs.X13.5mtrs.and further be pleased to declare that the defendant, their servants, officers have no right or authority to install the electricity cables/ overhead line from the electricity pole passing through the agricultural field of the plaintiff & further declare that the work executed by the concerned Officers may be declared as illegal,illogical,violative of provisions of the Indian Electricity Act and violation of principles of natural justice & be declared as violative of various Rules,Regulations & in violation of permission/authoriza-tion granted by the concerned Government/Central Govern-ment vide Gazette/Notification dated:17/06/2009;

"-B)

The Hon'ble Court may be pleased to declare that the concerned Officers,servants,contractors,sub-contract-ors had no right or authority to install electric poles or electricity line and to undertake foundation in the land of the plaintiffs without consent of the plaintiffs & therefore,be pleased to grant declaration to the effect that the action of the concerned Officers of defendant company is illegal, against the principles of natural justice & against the provisions of various Acts,Rules & Regulations & also against the Gazette/Notification dated 17/06/2009 & the same may be held illegal,arbitrary and further declaration be granted to the effect that the Defendant company had no right or authority to install electric poles & to execute the work beneath the land in

question without the consent of the plaintiffs & without following the provisions of law;

"-C)

The Hon'ble Court be pleased to grant mandatory injunction and be pleased to pass injunction & be pleased to direct the defendants, their officers/agents to remove the foundation admeasuring 75ft.X75ft, which is constructed beneath the land bearing Survey No.230of the plaintiffs & be pleased to grant permanent injunction to remove the electricity poles/tower which covers the land admeasuring 13.5X13.5sq.mtrs. situated in the Suit land of the plaintiffs & further be pleased to grant permanent injunction & direct the defendant company to remove the electr-icity wires/cables passing through the subject matter land of the plaintiffs & therefore,appropriate Decree may be passed and permanent mandatory injunction for removal of tower, foundation and overhead line be passed."

03. In Para-5 the present plaintiffs has humbly prayed that,--

(i) The Hon'ble Court may kindly grant this application;

(ii) The Hon'ble Court may be pleased to permit the applicants to add/amend the suit & be pleased to permit the applicants to add the aforementioned paragraphs and the prayer clause,in the aforesaid peculiar facts and circumstances of the case;

(iii)Pass such other and further order as may be deemed fit in the interest of justice.

04. The defendant filed reply vide below Exh.25 in which it has stated that, this application is false, & it can neither be amended nor be altered and therefore, the application filed by the plaintiff is not tenable & pray-

ed this Court to dismiss the application.

05. Heard Learned Advocates for both the parties.

06. Looking to the record of the suit & perused the papers and also read Order-VI Rule-17 of **C.P.C. Rule-**[**17. Amendment of pleadings.--**The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner & on such terms as may be just,& all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.:

Provided that no application for amendment shall be allowed after the trial has commenced,unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.]

07. Now in the case before me, the Courts be liberal in granting amendment & if they are necessary for complete adjudication of the case. The Court has only to find out whether the proposed amendment works any serious injustice to either side or it changes nature of the case or it takes away the legal right that has accrued in favour of the other side by lapse time.

08. Here in this case,the either side has no serious injustice and the nature of the suit is also not changed. So above application is hereby allowed.

-: <u>O R D E R</u> :-

-- This application is allowed and the plaintiffs are hereby directed to amend the plaint at Exh.-01 as well as prayers as mentioned in the above application within 14 days and new amended plaint be produced in English Language in the Court.

-- Pronounced in the Open Court to-day on 03th August, 2013.

Date. :- 03-08-2013.
Place. :- ANKLESVAR.

(BHARATKUMAR DHULABHAI PATEL),
ADDITIONAL SENIOR CIVIL JUDGE,
ANKLESVAR CODE NO.GJ00563.