


<p>MHAH170001492014</p> 	<p style="text-align: center;"><u>REGULAR CIVIL SUIT 70/2014</u> Raosaheb Narayan Bhadange and others Vs. Kusumbai Ambadas Cholke and others.</p>
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ORDER BELOW EXH.68.

This is an application filed by plaintiffs vide Rule 17 of Order VI of The Code of Civil Procedure, 1908 (in short CPC).

2. It is contended that suit is for measurement, fixation of four boundaries and injunction. Suit properties are adjacent to the properties to the defendants. Defendants are obstructing the peaceful possession of plaintiffs. Defendants have destroyed the common bandh. Therefore, the Court has directed the appointment of T.I.L.R. accordingly. Accordingly, the measurement is conducted by T.I.L.R. and report is filed. The measurement report is on record. The report states that some portion of the land is in possession of the persons who are not party to the suit. Therefore, the occupants of the property which is adjacent to the suit property have become necessary parties. To recover the possession of encroached portion , adjacent land holders need to be impleaded in the suit as necessary parties. Proposed defendant nos.19 to 41 are necessary parties. When plaintiffs demanded possession of the encroached area from proposed defendants, they refused to handover the possession. Hence, application be allowed.

3. Defendants failed to file say and argue on the application. Therefore, application is kept for order without say and argument of defendants.

4. Perused the application and record. It is well settled that while adjudicating the application for amendment, merit of amendment is not to be judged, whether the amendment is permissible or not that only is to be looked into.

5. On perusal of report filed by T.I.L.R. it appears that some portion of the suit property is shown to be in possession of persons who are not party to the suit. Therefore, they are mentioned as adjacent land holders. Granting the permission for proposed amendment would not amount to accepting the contentions raised by the plaintiffs as it is. It is needless to mention that plaintiff is supposed to prove his contentions by leading cogent evidence at the time of trial. On perusal of plaint, admittedly the suit is for fixation of four boundaries. Subsequent to the filing of report, plaintiff has come-up with the case of encroachment. The object behind Order VI, R.17 of C.P.C. is to avoid multiplicity of proceedings. All the reliefs and consequential reliefs are to be decided in one and same matter when the cause of action is same. Therefore, it would be most appropriate if addition of relief is permitted. Defendants have failed to contest the application. Trial is yet to commence. Proposed amendment is based on the subsequent event. Therefore, the nature of suit is not going to change in any manner which will cause prejudice to the defendants. At this stage, it appears that the relief sought is not time barred.

Proposed amendment is material to decide the real question of controversy between the parties. Therefore, there is no ground to reject the present application. Hence, the order.

ORDER

1. Application (Exh.68) is allowed.
2. Plaintiffs are directed to carry out the amendment and to file amended copy of plaint on or before next date.
3. Plaintiff is directed to pay appropriate court fees stamp on the added reliefs.
4. After amendment, issue suit summons to the defendant nos. 19 to 41 on p.f. r/o.

Place – Rahata.
Date – 14/06/24

(A. A. Kulkarni)
2nd Jt.Civil Judge, J.D., Rahata.

C E R T I F I C A T E

I affirm that the contents of this P.D.F. file order are same, word to word, as per the original Order.

Name of the Stenographer : R.M.Aragade

Court : 2nd Jt.Civil Court, Jr.Dn., Rahata.

Judgment / Order Date : 14/06/2024

Judgment / Order signed by : 14/06/2024
the Presiding Officer on

Judgment Order uploaded on : 14/06/2024