

MHAH200000112010



Sindhubai and Ors.

Vs.

Chandrakala

RCS No. 04/2010

ORDER BELOW EXHIBIT-96

(Passed on 31.03.2023)

This application is filed by the plaintiffs for amendment of plaint vide Order VI Rule-17 of the Civil Procedure Code (*Hereinafter referred as "the CPC"*).

2. It is the case of the plaintiffs that, according to the measurement report of D.S.L.R. Pathardi, the defendant has made encroachment over the suit property to the extent of 9 Ares. Hence, he prayed to amend the plaint in accordance with the Court Commissioner report.

3. Ld. advocate for the defendant filed his reply at Exh.98. He contended that, said measurement conducted by the Court Commissioner is not acceptable to the defendant. The plaintiff has not proved that, the defendant has made encroachment over the suit property. Therefore, the plaint cannot be amended. Hence, he prayed to reject the application.

4. Perused the application, reply and record. It appears that, plaintiffs is seeking amendment of the plaint in accordance with the Court Commissioner report. On the contrary the defendant submits that, said report is not acceptable to her and the plaintiff has not proved the encroachment over suit property. However, whether the defendant has made encroachment over the suit property or not, that can be determined only after giving

opportunity to the plaintiff to amend the plaint. Said fact of encroachment cannot be proved by the plaintiffs, unless it is pleaded. Therefore, submission of the defendant is devoid of merits. On the other hand, proposed amendment is necessary to determine the real controversy amongst parties and to avoid multiplicity of the judicial proceedings. Furthermore, if the proposed amendment will be granted, it would not cause any prejudice to the defendant, as the said fact mentioned in the proposed amendment can be considered only after evolution of the evidence. Hence, I am inclined to pass the order:-

ORDER

1. The application is allowed.
2. Plaintiffs are directed to carry out proposed amendment and to file amended written statement forthwith.
3. Parties to bear their own costs.

(Self- typed and pronounced in the open Court.)

Date: 31.03.2023
Place: Pathardi.

(Mayursingh D. Gautam)
2nd Jt. Civil Judge (J.D.),
Pathardi.