

-: ORDER BELOW EXH.114 :-  
 {Passed on this 20<sup>th</sup> day of August, 2024}

01. Perused the application, say of defendant Nos.1 to 4 (Exhibit No.117) and record. Heard both the sides. Considering their submissions and material available on record, the points for determination along with my findings and reasons therefor as under:-

<u>Sr. No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
(i).	Whether the proposed amendment is necessary for determination of the real question in controversy between the parties ?	... No.
(ii).	What order ?	... Application is rejected.

-: REASONS AND FINDINGS :-

AS TO POINT NOS.1 AND 2 :-

02. This is an application, filed by plaintiffs, under Order VI, Rule 17 of the Code of Civil Procedure,1908 (hereinafter referred as C.P.C. in short for brevity), for amendment of plaint. In this application, they contended that, they came to know that 12-R land was came to be encroached by defendants.

03. Plaintiffs want to amend their plaint by incorporating the heading of instant suit i.e. suit for possession of encroached land as well as in para 'B' defendant Nos.1 to 3 have made an encroachment as per the map filed by T.I.L.R. and after the

measurement by T.I.L.R. in the April, 2024 plaintiffs demanded the possession of encroached land from defendants, but defendants have not taken any heed and refused to hand over the possession of the land. Plaintiffs also prayed to amend thier plaint by incorporating sub-para A-1 i.e. in view of the report of Court Commissioner, defendant Nos.1 to 3 have made an encroachment of 12-R land and for possession.

04. Defendants have opposed the instant application by filing say thereon vide Exh.117 contending that, the instant matter is fixed for final argument, after completion of evidence of both parties. It is also the contention of defendants that, in their W.S. they have already pleaded that, some of the portion have been encroached by plaintiffs and defendants each other. They further contended that, this fact is very well known to the present applicants/plaintiffs. It is also the contention of defendants that, plaintiffs are not filed instant application with due diligence and hence, they have no any right to file the instant application. Defendants also contended that, the instant suit is filed by plaintiffs only for measurement and demarcation of the suit property alongwith prayer of permanent injunction and if the instant application is allowed, then the nature of the suit will be changed. They also contended that, the amendment sought by plaintiffs is already barred by law of limitation and hence, now plaintiffs can not amend their plaint for prayer of possession of

the alleged encroached area. Defendants further contended that, plaintiffs are not come with clean hands and due diligence before this Court. Hence, defendants prayed to reject the instant application with cost of Rs.10,000/-.

05. Heard both sides at length. Perused the record, application and say thereon.

06. Plaintiffs have filed present suit for measurement, demarcation of the suit property and permanent injunction against defendants in the year-2010. After perusal of the record, it reveals that, defendants have filed their written statement below Exh.117 and after perusal of para No.7 in their written statement, it has been contended that, as per the measurement done on 09.02.2007 by T.I.L.R., there was 33-R land encroached by plaintiffs and also contended that, defendants also encroached some of the land of plaintiffs. So, it reveals from the record that, plaintiffs have filed a map of T.I.L.R. dated 13.04.2007 which is at below Exh.110. From the said map it reveals that, the measurement was done on 13.04.2007 and on 18.07.2007 demarcated the suit property respectively. It means on 13.04.2007 and 18.07.2007 the work of measurement has been done. From the perusal of the said map, it reveals that, on 31.07.2010 the plaintiffs have applied for certified copy of the said map and it was prepared on 03.08.2010. From which it reveals that, in the year 2010 i.e. at the time of filling of

the instant suit, plaintiffs have very well known about the facts and circumstances of the encroachment as alleged, because on that basis the plaintiffs want to amend their plaint. But till today, they have neither amended their plaint, nor taken any heed at the first instance. From the settled principles of law, which is provided under Order VI, Rule 17 of C.P.C. the proviso is there, in which it is provided that,

*“no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that inspite of due diligence the party could not have raised the matter before the commencement of trial”.*

07. From the record, it reveals that, on 19.07.2012 my learned predecessor has framed issues below Exh.38 and thereafter first time on 10.07.2014 plaintiff No.1 adduced his evidence on affidavit below Exh.47 and the cross-examination has been completed by defendants on 10.09.2015. Even plaintiffs having knowledge about the encroachment, they have not taken any efforts to amend their plaint at the earliest. Thereafter, on 11.12.2015 plaintiffs have also examined one Raosaheb Baburao Shikare below Exh.62 and on the same day plaintiffs have filed pursis vide Exh.64 contending that, plaintiffs do not want to adduce any evidence.

08. On 15.01.2016 defendant No.1 Mahadeo Shankar

Gavhane filed his evidence on affidavit below Exh.66 and the cross-examination came to be completed by plaintiffs on 18.03.2016. Thereafter, on 21.04.2016 defendants have examined one Dattatray Pramod Kadu by filing his evidence on affidavit below Exh.72 and on the same day cross-examination came to be completed. From the record, it also reveals that, against the order passed by this Court below Exh.89 (application for correction in application below Exh.85 i.e. appointment of court commissioner) defendants preferred Writ Petition bearing No.581/2020 before Hon'ble Bombay High Court Judicature at Bombay, Bench at Aurangabad and the Hon'ble High Court quashed and set aside the order passed by this Court below Exh.89 and directed this Court to decide the matter finally within eight months from 25.10.2023. From the record, it also reveals that, on 03.05.2024 again plaintiff No.1 Ghanshyam Wadawkar adduced his evidence on affidavit below Exh.103.

09. After perusal of record, it reveals that, already the T.I.L.R. filed his report on 01.03.2024 below Exh.99. But, both the parties have not admitted the same. Thereafter, plaintiffs have filed an application below Exh.104, by which plaintiffs want to read over the affidavit of evidence filed below Exh.47 and not read over the affidavit filed below Exh.103. After hearing of the parties, this court granted an application vide Exh.103. Thereafter, defendants have filed pursis vide Exh.112 contending that, they do

not want to adduce any evidence and now the matter is come to be fixed for final argument. However, it clears that, plaintiffs filed instant application not only after the commencement of trial, but also completion of the evidence of both the parties.

10. Moreover, the instant case is fixed for the final argument. In such circumstances, when the suit is pending since the year of 2010, at this juncture, the plaintiffs can not be allowed to carry this sort of amendment, as prayed.

11. Having considered the rival submissions, at the outset, it is to be noted that this suit is filed in the year of 2010, for measurement, demarcation of property and permanent injunction. As such, to achieve the ends of justice in proper prospect, this application is not tenable. Moreover, after filing of evidence of affidavit, in view of the present application, now the plaintiffs are praying for incorporation of prayer and pleadings of encroachment and for possession in the plaint. For justifying filing of this application at this juncture, they are contending that in April-2014, they got the knowledge about the encroachment. With reference to their so called justification, here, it is to be noted that the parties are fighting since year-2010 i.e. since last about 14 years. As such, it is very hard to accept that, recently the plaintiffs came to know about the said encroachment. Being so, there seems no iota of material to gather any due diligence of the plaintiffs to

incorporate the proposed facts while filing of this suit itself. Because the map filed by T.I.L.R. vide Exh.110 was came to be prepared in the year-2007 and till today the plaintiffs keep mum best reasons known to them.

12. It can be concluded that the amendment of pleadings cannot be claimed by the party as a matter of right nor can be denied by the Court arbitrarily. However, the discretion to be exercised by the Court is guided by the principles mentioned under the proviso to R.17 and depends on the facts and circumstances of each case. As such O.VI R.17 is intended for promoting the ends of justice and not for defeating them, therefore grant of amendments is the rule and refusal is the exception.

13. Further, I am of the opinion that, allowing this amendment would lead to unending fighting between the parties. It would shake basic structure of the pleadings. On this background, at such a belated stage of the litigation, where the trial is not only commenced, but also completed and is aging about 14 years, there seems no due diligence on the part of plaintiffs to justify filing of this application and hence, it would be just and proper to reject the instant application. Consequent thereto, I answered point No.1 in the negative and to answer point No.2, I pass the following order :-

**-: ORDER :-**

- (i). The application (Exhibit No.114) is rejected.
- (ii). Costs to follow the event.
- (iii). The Parties to expedite the matter.

Jamkhed.  
Date:20.08.2024

{ V.V.Joshi }  
Civil Judge Junior Division,  
Jamkhed, Dist. Jamkhed.