

MHAH210011112017



**ORDER BELOW EXHIBIT NO.28 APPLICATION UNDER  
ORDER VI, RULE 17 OF THE CODE OF CIVIL PROCEDURE FOR  
AMENDMENT IN PLAINT**

**(Passed on this 15<sup>th</sup> July, 2022)**

01. Perused the application, record and detailed say on behalf of defendants filed below Exh.28. Heard both sides at length. Having considered the rival submissions, the points for determination along with my findings and reasons therefore are as under:-

<b><u>SR.NO.</u></b>	<b><u>POINTS</u></b>	<b><u>FINDINGS</u></b>
(i).	Whether the proposed amendment is necessary for determination of the real question in controversy ?	Yes.
(ii).	What order ?	As per final order.

**:- REASONS AND FINDINGS :-**

**AS TO POINT NO.1:-**

02. This is an application, filed by the plaintiff, under Order VI, Rule 17 of the Code of Civil Procedure,1908, by which plaintiff's want to amend his plaint contending that after the appointment of court commissioner i.e. TILR, Jamkhed, he filed the commissioner report, wherein TILR reported the encroached area. It is therefore necessary to bring this essential facts on record by carrying out necessary amendment in the instant suit.

03. Defendants filed their detailed reply below Exh.28

contending that the instant amendment application filed by plaintiff Exh.28 is not proper and tenable at this stage. He also contended that by filling this application, the plaintiff want to change the subject matter, by which nature of the suit would be changed which is not permissible as per the provisions of law.

**04.** It is the argument advanced by learned counsel for plaintiff that the plaintiff was deligent and after due measurement of the suit site, it revealed that, defendants have encroached over the suit site. Hence, after filing of the commissioner report, he know said facts, so he wants to amend his plaint. On the contrary, learned counsel for Defendants argued that, the application is not tenable. It is aslo the contention of defendants that, the way is going from the agricultural field of defendants and commissioner wrongly shown in his map that the said are has been encroached by defendants. It is also the argument advanced by learned counsel for defendants that due to proposed amendment the nature of the suit will also be changed. Hence, defendants prayed to reject the instant application.

**11.** It is pertinent to note that, as per provisions of *Order VI, Rule 17 the Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and 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.*

It is pertinent to note that, plaintiff himself is the propounder of his suit. On perusal of proposed amendment sought by plaintiff, it appears that, by way of proposed amendment, plaintiff wants to bring on record the fact of encroachment. This court yet not to be framed the issues and hence, trial yet to be commenced.

**12.** In the case of *Rajesh Kumar Agarwal and others vs. K.K. Modi and others [(2006)4 SCC 385]*, the Hon'ble Apex Court held that :-

*“The object of Order 6 Rule 17 is that the courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side. The rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment*

*should be exercised in the larger interest of doing full and complete justice to the parties before the court. The court always gives leave to amend the pleadings of a party unless it is satisfied that the party applying was acting malafide. The amendment to pleading should be liberally allowed since procedural obstacles ought not to impede the dispensation of justice. The Court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard the rights of both parties and to sub-serve the ends of justice.”*

**13.** In the case in hand, plaintiff has filed present application for amendment in the plaint to incorporate the plea of encroachment. It is well established that, all rules and procedure are handmaid of justice and technicalities of law should not be permitted to hamper the Courts in the administration of justice between the parties. Therefore, considering above facts and circumstances, it shows that, the proposed amendment is essential in order to determine the real questions in controversy between the parties. Moreover, if present application is allowed, no prejudice would be caused to any of defendants and the proposed amendment would certainly reduce the chain of litigation and would also facilitate this court to decide the real controversy between the parties effectively and finally.

**14.** It is equally well settled principle that, a prayer for amendment of the plaint and a prayer for amendment of the

written statement stand on different footings. The general principle that amendment of pleadings cannot be allowed so as to alter materially or substitute cause of action or the nature of claim applies to amendments to plaint.

15. Keeping in mind the settled position, it is not necessary for this court to go in proof of amendment sought. Proof of facts is not to be looked at this stage. From the copy of court commissioner below Exh.27 filed by court commissioner, plaintiff moved instant application. Proposed amendment if allowed, then it will be helpful for adjudication of suit on merits as this suit is of perpetual injunction. Basic nature of the suit will not be changed, if amendment as sought, are allowed to be carried in the plaint. In fact, amendment will help to prevent multiplicity of litigations. Moreover, due to said amendment in plaint no irreparable loss would be caused to defendant's case at this juncture as they having every right and opportunity to discard the pleading of plaintiff. However, the proposed amendment would certainly reduce the chain of litigation and would also facilitate this court to decide the suit issues effectively and finally. At the same time, even the adversaries would get the equal opportunities to meet proposed consequential amendments and as such, it would not affect their interest too. In the set of facts and circumstances, I am of the opinion that the present application needs to be allowed. Hence, I answered point No.1 in the affirmative and to answer point No.2, I

pass following order as under :-

**-: O R D E R :-**

- (a). The application (Exhibit No.28) is allowed.
- (b). The Plaintiff is directed to carry out amendment as prayed in plaint (Exh.1) positively till next date or within 14 days from the date of this order.
- (c). After compliance, plaintiff to file amended copy of the plaint along with additional copies for defendants.
- (d). The plaintiff is further directed to deposit the court fee in view of amendment as per rules, if any.
- (e). Parties to take note.

**Jamkhed.**  
**Date:15.07.2022**

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

ORDER BELOW EXH.28.  
CNR NO.MHAH21001111-2017

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R.C.S. NO. 153/2017.  
YASHWANT VS. BABAN & ANR.

**C E R T I F I C A T E**

“It is affirmed that the contents of this P.  
D. F. File of order is word to word as per  
original order.”

Typed By : Presiding Officer.

**E N D O R S E M E N T**

Case argued on	:	15.07.2022
Order dictated on	:	15.07.2022
Transcription ready on	:	15.07.2022
Order Checked and signed on	:	15.07.2022