

(CNR No. MHAH22-000302-2012)

Reg.C.S.No.110/2012

Bapu Vs. Baban

ORDER BELOW EXH.
(Passed on 11-07-2017)

1. This is an application for amendment of plaint under Order 6 Rule 17 of the Code of Civil Procedure. Plaintiff is praying to correct the area of suit property which revealed after getting the report Court Commissioner. Defendant has opposed the application contending that, they have not made any construction after the filing of suit and the construction over the suit property is very old. The defendant has also contented that no subsequent has taken place and the plaintiff has filed his affidavit of examination in chief. Thus, according to the defendant the trial is commenced. It is also contended that, if the proposed amendment is allowed it will change the nature of suit. Hence, defendant prayed for rejection of the application.

2. Heard learned advocates for both the parties. Perused the record.

3. Order 6 Rule 17 empowers the court to allow any of the party to the proceedings to alter or amend his pleadings for the purpose of determining the real question of controversy between the parties. Proviso of Rule 17 provides that amendment shall not 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.

4. It is seen that, the suit is for declaration, mandatory injunction and damages. It is the case of plaintiff that, defendants have illegally made construction over the suit property. According, to the plaintiff the defendant has made construction of 10 X 25 ft. over his property. During the pendency of suit court commissioner came to be appointed for spot verification and measurement of constructed area of defendant. The Court Commissioner filed his report at Exh.64 in which it is informed that the construction is over 32 ft. X 27 ft. at eastern side and 6 ft. X 26 ft. on western side. Thus, plaintiff wants to amend the plaint thereby changing the dimensions of the construction which is to be removed.

5. Learned advocate for defendant has argued that the defendant has not made any new construction over the suit property and therefore, there is no subsequent event. In this context, it is seen that, the plaintiff has contended at the time of moving application for appointment of Court Commissioner that as the defendant is contending that the construction old one, it is necessary to appoint Court Commissioner to visit and measure the actual construction of the defendant. Accordingly, the Court Commissioner has measured and filed his report.

Admittedly, the Court Commissioner was not the expert person to identify the age of construction. Still, the measurements taken by him can be considered. In the instant matter, the construction over the suit property is not the subsequent event but, the subsequent event is the report of Court Commissioner. Hence, the submissions of learned advocate for defendant are not worth convincing.

6. Learned advocate for defendant has further argued that, the defendant has not admitted the report of court commissioner. According to him, unless the authenticity of commissioner's report is verified, the proposed amendment cannot be allowed. In this context, it is worth to mention here that, allowing the proposed amendment would never mean that the plaintiff has proved the contents of amendment. The plaintiff has proved his pleading by producing cogent and convincing evidence. So far as, contentions regarding authenticity of commissioner's report is concern, it can be checked during the course of trial. Thus, I am of the view that, no harm would be caused to the defendant if the proposed amendment is allowed as he would get an opportunity to oppose the same by amending his written statement.

7. As the suit is for mandatory injunction it is necessary to identify the property for proper execution of the decree. Hence, in my view the proposed amendment is

necessary to resolve the real controversy between the parties. The nature of suit will not change if the proposed amendment is allowed. Hence, for the reasons mentioned above I pass following order.

: ORDER :

1. The application is allowed.
2. Plaintiff to carryout the amendment on or before next date.
3. In the facts and circumstances, no orders as to costs.

Sd/-

Karjat

(M.M.Palsapure)

Date :- 11-07-2018

Jt.Civil Judge Jr.Dn., Karjat