

ORDER BELOW EXH. 28 IN R.C.S. No. 101/2016

1] The present application is filed by the plaintiffs for amendment in the plaint.

2] As per the plaintiffs the suit is for perpetual injunction and fixation of boundaries. In pendency of the suit the cadastral surveyor was appointed for measurement of suit property and to show the internal boundaries of the parties. After the measurement the court commissioner filed his report wherein it is found that the defendant nos. 1 to 5 and 7 to 9 have made encroachment over the suit property of plaintiff no.1 to the extent of 1.30 Sq.Mt. and on the property of plaintiff no. 2 to the extent of 0.48 Sq.Mt. Therefore, in order to obtain possession of encroached area, plaintiffs prayed to amend the plaint. Accordingly, by way of proposed amendment the plaintiffs are seeking the possession of encroached area which is specifically shown in the measurement map by the court commissioner. The plaintiffs further alleged that the proposed amendment will not change the nature of the suit and therefore, prayed to allow the application.

3] On the other hand defendant no.1 contested the present application by contending that the proposed amendment will change the original nature of the suit. There were no allegations of encroachment and moreover measurement map is not accepted to the defendant. Hence, defendant no. 1 prayed to reject the application.

4] Heard both sides. At the outset it is worthwhile to mention that plaintiffs have specifically alleged that as there is boundary dispute and when defendants denied to give consent for joint measurement, they constrained to file the present suit for fixation of boundaries. In

the pendency of the suit, the court commissioner was appointed who filed his report alongwith Exh. 25. On perusal of the said report, it discloses that there is some encroachment by the defendants over the suit property. All these facts came into knowledge of the plaintiffs after report of court commissioner i.e. subsequent to the filing of the present suit. Moreover, considering the nature of the suit, I am of the opinion that the proposed amendment will not change the original nature of the suit. Moreover, to avoid multiplicity of the proceeding and to resolve the dispute between the parties by single suit, the proposed amendment is essential. No prejudice will cause to the defendants if proposed amendment is allowed. Accordingly, the amendment application deserves to be allowed and following order is passed.

**Order**

- 1] Application Exh. 28 is hereby allowed.
- 2] The plaintiffs to carry out the amendment within 14 days and also produce the amended copy of plaint within 14 days and failure to comply, leads to rejection of present application.

Dictated and pronounced in open court.

Shrigonda.  
Date : 18/01/2018.

( K. M. Kayangude )  
Jt. Civil Judge Senior Division,  
Shrigonda