

MHAH230007252016



ORDER BELOW EXH.23 IN
R.C.S. NO. 311/2016

1. Plaintiffs in present suit has filed this application under Rule 17 of Order VI of Code of Civil Procedure, 1908, seeking amendment in plaint to plead an additional facts pertains to appointment of court commission during pendency of suit, facts as revealed through measurement of the suit property and to seek recovery of possession of exact portion of land alleged to have been encroached by defendant along with claiming *mesne profit* from defendant. Defendant has resisted the application by filing her say. Perused the application and say. Heard, learned advocates appearing for both the parties. Having regards to the nature of the proposed amendment and argument advanced on behalf of both the parties, following points have been arisen for my discussion and determination to which, I answer along with my findings thereon.

<u>No.</u>	<u>Points</u>	<u>Findings</u>
1.	Whether the proposed amendment is essential for the just decision of the case and to resolve the question into controversy between the parties.	Yes.
2	What order ?	Application is allowed.

:: R E A S O N S ::

AS TO POINT NO. 1 to 2:

2. Through present suit, reliefs of fixation and demarcation of boundaries of the suit property along with recovery of possession of portion of land, alleged to have been encroached by the defendant, have been sought by the plaintiffs. In prayer clause, plaintiffs have not referred the exact portion of land alleged to have been encroached by the defendant. However, in view to ascertain the exact portion of land alleged to have been encroached by the defendant, plaintiffs have sought the appointment of court commission for measurement of the suit property. From the record of present suit, it appears that in pursuance of order passed below Exh. 5, Deputy Superintendent of Land Record, Shrigonda has been appointed as Court Commissioner for undertaking the internal and joint measurement of the suit property. In compliance of order passed below Exh.5, Court Commissioner has undertaken the measurement of the land of plaintiffs as well as defendant and submitted his report along with measurement map. Through proposed amendment, plaintiffs want to plead an additional facts that on measurement of the suit property by court commissioner, 45 R land belonged to them is revealed to have been encroached by the defendant. Through proposed amendment, plaintiffs not only want to seek the recovery of possession of 45 R land alleged to have been encroached by defendant, but they also want to claim *mesne profit* from defendant. When it is contention of plaintiffs that, 45 R land belonged to them has been encroached by defendant and same appears to have been specified in measurement map, an opportunity is essential to be given to the plaintiffs to plead an additional fact as revealed through

measurement along with permitting them to seek recovery of possession of 45 R land alleged to have been defendant, along with seeking relief pertains to *mesne profit*. If proposed amendment is declined, plaintiffs would not only be deprived from substantiating the facts as revealed through Court Commission, but they will also be deprived from seeking the appropriate reliefs in respect of the portion of land alleged to have been encroached by the defendant.

3. Though the plaintiffs are permitted to carry out amendment as prayed for, no prejudice would be caused to defendant, as defendant would be at liberty to challenge the fact sought to be pleaded by submitting additional written statement and also through cross-examination. Through proposed amendment, plaintiffs are not introducing new cause of action. Therefore, even nature of the suit is not likely to be changed on permitting the amendment.

4. Due to measurement of the suit property during pendency of the suit and detection new fact pertains to alleged encroachment on the part of defendant, amendment has been proposed by the plaintiffs. It is settled position of law that amendment can be permitted liberally, if same has been sought due to happening of subsequent events. No doubt, measurement of the suit property during pendency of the suit and detection of new fact pertains to exact portion of land alleged to have been encroached by defendant, can be treated as subsequent events. Therefore, due to

happening of those subsequent events, plaintiffs are required to be permitted to carry out amendment as prayed for. Considering the happening of subsequent events during pendency of the suit and absence of possibility of causing prejudice to the defendant, it would be just and proper to allow the plaintiffs to carry out the amendment as prayed for. Proposed amendment is essential for the just decision of the case and to resolve all the questions into controversy between the parties. Hence, I answer point no.1 in affirmative and pass following order for point no.2 :-

: **ORDER** :

1. Application at Exh.23 is allowed.
2. Plaintiffs are permitted to carry out amendment in the plaint as prayed for, within 14 days from today, subject to costs of Rs.1000/- payable to defendant, jointly or severally.

Shrigonda

Date :- 28/04/2025

(**H. J. Pathan**)

2nd Jt. Civil Judge, S.D. Shrigonda.