

**Regular Civil Suit Number 213/2010
CNR Number MHAH-23-000737-2014**

1. Rajendra Umaji Shinde Plaintiffs
Versus
1. Balu Rangu Kolekar Defendants

ORDER BELOW EXHIBIT 55

1. The suit is for removal of encroachment and perpetual injunction. The plaintiffs have stated that, the defendants have made encroachment over suit property. The defendants have acquired possession of some part of suit property by doing encroachment over it. The plaintiffs have filed the application vide exhibit 55 to do amendment in pleading in the suit. Therefore, amendment is necessary. It will not change nature of suit. Hence, it is necessary to do amendment as per application vide exhibit 55. The court has called the say of opposite side on application vide exhibit 55. The defendant number 1, 2 and 6 have filed say and raised strong objection. It is stated that, application is false and vexatious. The court commissioner is not examined by plaintiff. The amendment will cause change in nature of suit. Hence, it is to be rejected.

2. I have perused application vide exhibit 55 filed by plaintiffs and say of defendant number 1, 2 and 6.

3. Upon hearing of both sides and on perusal of exhibit 55 and say of defendant number 1 and 2, the following points arise for my consideration.

Sr. No.	Points	Findings
1.	Whether proposed amendment will change nature of suit ?	No
2.	Whether proposed amendment is necessary to decide real dispute between parties ?	Yes
3.	Are Plaintiffs entitled for relief of amendment ?	Yes
4.	What is Order ?	The application is allowed.

REASONS

As to point number 1 to 4

4. The point number 1 to 3 are interconnected with each other. Hence, they are clubbed together. The plaintiff has filed the application vide exhibit 55 and stated that, the defendants have made encroachment over suit property. The court commissioner is appointed and report of court commissioner is filed on record vide exhibit 53. It is necessary to amend the suit with reference to report of court commissioner vide exhibit 53. Proposed amendment will not change nature of suit.

5. This is suit for removal of encroachment and perpetual injunction. The plaintiff has stated that, the defendants have made encroachment over suit property. Hence, it is necessary to amend the suit.

6. The court commissioner is appointed and report of court commissioner is filed on record vide exhibit 53. It is necessary to amend the suit with reference to report of court commissioner vide exhibit 53. It will not change nature of suit. In the present suit, the plaintiff is stating that, there is encroachment upon suit property. In order to enable the court to adjudicate effectively, completely, to

settle all the questions involved in the suit, and in the interest of justice, it is necessary to allow the application vide exhibit 55. The application vide exhibit 55 is filed under the provision of order 6 rule 17 of Code of Civil Procedure.

7. The amendment is necessary to decide real dispute in the parties. In view of court, the nature of proposed amendment is not causing any change in the nature of claim of suit. It will not damage or change the nature of suit, rather the amendment will sort out the dispute between parties. It seems that the proposed amendment is bona fide one. The proposed amendment is necessary for the purpose of determining the real questions in controversy between the parties. If the application vide exhibit 55 is rejected then it may result in multiplicity of litigation. In order to avoid multiplicity of proceeding, it will be appropriate to allow the said application. The proposed amendment will help the court to adjudicate the dispute on its merit. The defendants will get the opportunity to put forth their defence. Therefore, the application is allowed. In the result, the following order is passed.

ORDER

1. The application vide exhibit 55 is allowed.
2. The suit shall be amended accordingly on or before next date by plaintiffs and copy of amended plaint is to be filed on or before next date. The suit shall proceed further in accordance with provisions of law.
3. The plaintiffs shall pay necessary court fee stamp in this behalf.

Sd/-

Date – 08/12/2022

Smt. K. A. Katkar
Joint C. J. J. D. Shrigonda.

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

I affirm that the contents of this pdf file order are same words
as per

original Order.

Case No. : R.C.S.No. 213/2010

Name of Clerk : Smt. S. V. Jadhav

Court Name : Smt. K. A. Katkar
Joint C.J.J.D., Shrigonda.

Date of Decision : 08/12/2022

Order signed by P.O. on : 08/12/2022

Order uploaded on : 08/12/2022