

Order below application vide Exh. 17 in R.C.S.No.292 /2017
(CNR No. MHAH2500 0696 2017)

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1. The present application is filed by the plaintiffs under Order VI Rule 17 of Civil Procedure Code, 1908 (hereinafter referred as C.P.C. for the sake of brevity) for seeking amendment in the plaint.
2. The present suit is filed by the plaintiffs for permanent injunction.
3. The plaintiffs through their application proposes to carry out the following amendments: i.e. to add proposed defendant Nos. 2 to 4 namely Pandhrinath Genu Gund, Eknath Genu Gund and Balu Genu Gund respectively. The plaintiff through the present application is contending that the TILR was appointed as court commissioner and accordingly at exh. 16 the court commissioner filed a report. On perusal of the report it appears that the adjusting owners of Gat No. 279/4 have encroached upon the property but as they are not a party to the suit the plaintiff is unable to claim any reliefs. Hence the plaintiff prays to add proposed defendant Nos. 2 to 4 to the present suit. The plaintiff has also prays to add certain pleadings with regards to the encroachment made by defendant No. 1 and which is apparent from a report of court commissioner.
4. The say was not filed on the present application by the Ld. Advocate of the defendant stating that he has no objection to carry out the said amendment.
5. Perused the application. Also perused the records, heard the Ld. Advocates for the plaintiff and defendant . I hereby proceed to decide the application.

6. For deciding the present application it is necessary to look into the provision as provided under the Code of Civil Procedure Order 6 Rule 17 which is stated as under:

***Amendment of pleadings** : 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.

7. With regards to the proposed amendment the plaintiff seeks to add proposed defendant Nos. 2 to 4 to the present suit and to add certain pleadings with regards to the encroachment made by defendant as shown in the report of court commissioner at exh. 16. The defendant has given no objection to carry out the present amendment. It appears from the report of the Court Commissioner that, there is a partition marked with green colour which shows the encroachment made by the defendants over the property of the plaintiff. The said report is with regards to Gat No. 239 which is the suit property in the present suit.

8. On perusal of the plaint and its prayer clause, it appears that the plaintiffs are seeking the relief of permanent injunction against the defendants so that they do not obstruct from plaintiffs' possession nor do they try to encroach the property.

9. Considering all of the above, I am of the opinion that, the amendment if allowed at the stage would avoid multiplicity and proceeding. The map of the Court Commission prima facie shows a cause of action on the basis of which the plaintiffs seek the amendment through the present application. In my opinion, in no way it would change the nature of the suit. Hence, to avoid multiplicity of the suits which is the dominant object behind allowing the amendment application and for determining the real question in controversy between the parties the said amendments are necessary. However, the present application in my opinion would not cause serious injury or loss to the other party, on the other hand the defendants are at liberty to file the written statement over the same and as per law leaves them at liberty to deny or accept the contentions made by the plaintiff in the plaint. However, as no objection filed by the defendant, it would not any prejudice to the defendant if the application is allowed. Hence, in the circumstances the present application is required to be allowed.

ORDER

1. Application Exh.17 is hereby allowed.
2. Plaintiff is directed to carry out the amendment within 14 days from the date of the order.
3. No order as to costs.

Sd/-

Date:24/01/2020

(Uma Arun Borade)
Jt. Civil Judge, J.D.,Parner.