

Order below Exh. 40 in RCS No. 817/2014

This is the amendment application filed by the plaintiff Under Order 6 Rule 17 of the Code of Civil Procedure.

2] Read the application and say thereon. Heard Ld. Advocate Shri. M.L. Auty for the plaintiff and Ld. Advocate Shri. V.A. Dhokale for the defendants.

3] By way of this amendment application plaintiff wants to add relief in the nature of mandatory injunction. It is contended by the plaintiff that defendant no. 2 has constructed his house in the suit property after the institution of the suit. The construction made by him is illegal. As it is a subsequent event, now the plaintiff wants to add relief against illegal construction made by defendant no. 2. Hence, Ld. Advocate prayed for allowing the present amendment application.

4] Ld. Advocate Shri. V.A .Dhokale through his say submitted that about the alleged construction made by defendant no. 2 no documentary evidence is produced on record by the plaintiff. Application is not tenable at this stage. Plaintiff has made this application for creating evidence. Hence, Ld. Advocate prayed for dismissal of this application with costs.

5] After going through the rival contentions of both the parties, following points arise for my determination and I have recorded my findings thereon as under.

<u>POINTS</u>	<u>FINDINGS</u>
1. Whether the plaintiff is entitled for amendment in plaint as prayed ?	Yes.
2. What order ?	As per final order.

REASONS

6] Order 6 Rule 17 of the C.P.C. provides that ,
“ the court may at any stage of the proceedings allow either party to alter or to 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] This is the suit for declaration, perpetual injunction against defendant nos. 2 and 6 and recovery of possession from defendant nos. 8 and 9. Suit is at the stage of leading evidence by the plaintiff. Application of the plaintiff is supported with affidavit. Though the trial of the suit is started still as the relief claimed by the plaintiff is based on subsequent event, application of the plaintiff needs to be allowed. Through this application plaintiff is claiming only relief. This is not going to prove the encroachment made by the defendant no. 2. Plaintiff has to prove his case for getting this type of relief against defendant no. 2. But for proving the same, some relevant para and relief to that respect required to be added by the plaintiff. Hence, application of the plaintiff is not to create the evidence, but as the trial has been started, application is allowed on cost of Rs. 500/-. Hence, I answer point no. 1 in “affirmative” and proceed to pass the following order.

Order

1] Application is allowed subject to cost of Rs. 500/- to be paid to the defendants.

..3..

- 2] After payment of cost, amendment be made in plaint within 14 days from this order and plaintiff is directed to file the amended copy of plaint on record.
- 3] Asstt. Superintendent of Parner Court to scrutiny and verify regarding the valuation of the suit and report whether proper court fees and stamp duty is paid or not.

Dt. 05.06.2017

(Smt. P.N. Kokate)
2nd Jt. Civil Judge (J.D.)
Parner.