

**ORDER BELOW EXH.31**

(Passed on 12-06-2025)

This is an application filed by the plaintiff for amendment of his plaint vide Order VI Rule 17 of the Code of Civil Procedure, 1908 (in short 'CPC').

2. In this application it is contended by the plaintiff that, he has filed this suit for the relief of declaration and permanent injunction. In this suit initially the plaintiff had sought an order of injunction restraining the defendant no.1 from doing his construction on public road. But after the rejection of plaintiff's application filed for such temporary injunction the defendant no. 1 has done his construction over the public road in front of the house of present plaintiff. He has completed the construction of his stair case on the area mentioned by English alphabets 'CDEF' in the plaint map. Therefore due to such subsequent act done by the defendant no.1 plaintiff has to seek the relief of declaration that the construction done by the defendant no.1 is illegal and the plaintiff has to seek the mandatory injunction by directing the defendant no.2 for demolishing the construction of defendant no. 1 done over the public road. Therefore, in respect of such subsequently occurred fact the plaintiff wants to insert the para no. 2-A and 3-A in his plaint by way of proposed amendment.

3. It is further contended by the plaintiff that, if this application is allowed then nature of this suit will not be changed. Contrary if this application is rejected then great prejudice will be caused to the present plaintiff. Therefore, this application be allowed and the plaintiff be permitted to do the proposed amendment in his plaint.

4. The defendant no.1 has filed his say to this application at Exh.32. In his say he has contended that, the plaintiff has made a vague statement in respect of defendant's encroachment and construction of his stair case over the encroached area. Without measurement done by competent authority it cannot be believed that the defendant no.1 has done encroachment as contended by the plaintiff. The plaintiff has filed this suit on the basis of mere assumption and imagination. The defendant no.1 has already filed pursis Exh.16 dated 06.10.2022 on record stating that his construction is already completed prior to 10.06.2022. In such circumstances if present application is allowed then nature of this suit will be changed. Further the proposed amendment hits by the provision of Limitation Act, therefore, this application is not tenable. So, it be rejected with costs.

5. Heard the respective learned Advocates of both sides at length. On going through the overall record and submissions it is very clear that, the plaintiff has filed this suit for the relief of declaration that the construction of stair case of defendant no.1 done over the area mentioned by English alphabets 'CDEF' in plaint map is illegal. As well as the plaintiff has prayed for mandatory injunction directing the defendant no. 2 to restrain the defendant no.1 from doing his construction of stair case over the public road. After the filing of this suit the defendant no.1 has filed pursis Exh.16 on record stating that his construction of stair case is already over prior to 10.06.2022. Now the plaintiff is contending that the defendant no.1 has completed his construction during the pendency of this suit. In such circumstances it is quiet clear that for the conclusive

determination of controversy between the parties in respect of construction of the stair case by doing encroachment over the public road proposed amendment is necessary. Further it appears that due to proposed amendment nature of this suit will not be changed. As well as if proposed amendment is allowed then it would be helpful for the proper and complete adjudication of dispute between the parties of this suit. Further it appears that yet the trial of this suit is not commenced. In such circumstances no prejudice will cause to other side if this application is allowed. Therefore, this application deserved to be allowed as sought. Hence, I pass the following order.

**ORDER**

1. The application Exh.31 is hereby allowed.
2. The plaintiff is hereby directed to amend his plaint on or before next date of this suit and he is further directed to produce the copies of amended plaint on record on or before next date of this suit.
3. Costs in main cause.

Date : 12/06/2025.

**( Mahesh S. Kale )**  
Civil Judge (Sr. Dn.),  
Akot.