

ORDER BELOW EXH. 46 IN R.C.S. NO. 20/2013

(CNR No. MHAK070002412013)

(Passed on 18/05/2022)

1. Present application is filed by plaintiff for permission to amend the plaint under Order 6, Rule 17 r/w section 151 of Civil Procedure Code (hereinafter referred to as the 'Code' for short).

2. Perused application and say of defendants below Exh. 57. Heard both parties.

3. Plaintiff had contended that he has filed the suit for recovery of possession and for injunction along with application under order 39 rule 1 & 2 r/w section 151 of C.P.C. against the defendants. That it was directed to the defendants to maintain status-quo but in spite of that the defendants have constructed room on the open land of the plaintiff's plot thereby disobeying the order passed by the court. That the plaintiff has filed report in the police station Ural Bk. Tq. Balapur, Dist- Akola against the defendants but the police station Ural bk. did not taken any action against the defendants. That the act of the defendants is illegal and high handed therefore it is necessary to remove the said illegal construction made by the defendants over the open land of the plaintiff's plot. It is submitted that during the pendency of suit the defendants have removed the roof of country style of suit property and also demolished some portion of walls of the suit property with intention to cause damage to the suit property. That to avoid further complications and multiplicity of litigation the plaintiff wants to amend the plaint in title clause, contents and prayer clause accordingly.

4. That the above amendment is subsequent events and same is very material for determination of the real controversies in

the suit therefore, it is necessary to allow the application filed by the plaintiff. If the application is allowed no prejudice will cause to the defendants. If the application is not allowed then the plaintiff will suffer irreparable loss. That the proposed amendment does not change nature of the suit in any way. Hence this application.

5. Defendants resisted the application by filing say below Exh. 57. They denied contents of application. They submitted that the picture painted by the plaintiff is totally incorrect and the statement made regarding disobeying the order is misleading one so as to gain the sympathy from the Court. The proposed amendment is changing the nature of the plaint and therefore the proposed amendment is specifically hereby denied in toto and reserve right to file reply on the same at appropriate stage if required. As the prayer is not tenable and changing the nature of suit, hence the contents of prayer clause are hereby specifically denied in toto. The affidavit and verification filed by the plaintiff is not true and correct and hence denied in toto. They further submitted that the application framed and filed is not tenable under law, as it is changing the nature of the plaint and therefore on this sole ground, the application deserves to be rejected. That the plaintiff is trying to paint a new picture so as to obtain an injunction against the defendant on false ground. Hence, application be rejected.

6. Present suit is instituted for recovery of possession and permanent injunction. The proposed amendment is prima-facie with respect to subsequent event which took place during the pendency of the suit. Plaintiff has given details with regard to such event. Considering the fact that such contention of plaintiff is a subsequent development, it is necessary to incorporate such facts

in the plaint to decide the dispute between parties. In the present suit, after framing of issues plaintiff has not filed affidavit-in-lieu of examination-in-chief yet. Considering the stage, and also the nature of proposed amendment which is based on subsequent development, no prejudice would be caused by the same to defendants. Therefore, in fact such proposed facts would be necessary to resolve the real questions of controversy between the parties. This cannot be said to change the nature of suit or to prejudice defendants, as they would be at liberty to seek consequential amendment, cross-examine plaintiff's witnesses and lead their evidence. Proposed amendment is not inconsistent with original pleading of plaintiff. Therefore, proposed amendment, if allowed, would neither change nature of suit, nor put a new story, nor prejudice defendants and in fact it would be necessary for coming to a proper conclusion. Therefore, application deserves to be allowed. Hence, following order is passed.

: ORDER :

1. Application is allowed.
2. Plaintiff to amend pleadings accordingly and supply copy of amended plaint, within next date.
3. Costs on applicant.

Balapur.
Date:- 18.05.2022

(C. P. Raghuvanshi)
Civil Judge (J.D.), Balapur.

Certificate

I affirm that the contents of this P.D.F. file are same word for word as per original order.

Name of Steno	:	Shaikh Rafique
Court Name	:	C.J.J.D. & J.M.F.C., Balapur.
Date	:	18.05.2022
Signed by Presiding Officer on	:	18.05.2022
Uploaded on	:	18.05.2022
