

ORDER BELOW EXH. 34 IN R.C.S. NO. 53/2010

(CNR No. MHAK070002722010)

(Passed on 14/01/2020)

1. Application is filed by defendants for amendment of their written statement under Order 6, Rule 17 of C.P.C. (hereinafter referred to as the 'Code' for short).
2. Perused application and say filed by plaintiff on this application. Heard both parties.
3. Defendants have contended that they have filed their written statement to the suit filed by plaintiff for removal of encroachment and possession. During the pendency of the suit defendant no. 2 Vasudeo Ramchandra Mankar got measured his agricultural field situated at mojue Wadegaon bearing gut no. 1250 area 1 H 26 R at the hands of Dy. Supdt. Land Records, Balapur. The said measurement was carried out on 24.02.2016. In the said measurement it is found that plaintiff in this matter have encroached to the extent of 0.04 R land in the field of defendant no. 2. Defendant no. 2 have filed the suit for removal of encroachment against the present plaintiff Dattatray which is registered as RCS No. 07/2019. The act of filing the suit by defendant no. 2 and measurement of his agricultural field are subsequent events and therefore it is necessary to bring this factual position on record.
4. That the above said amendment is the formal in nature and does not change the nature of the suit. No prejudice will be caused to anybody if the amendment application is allowed. This amendment is the subsequent event during the pendency of suit. Hence, to bring the factual position on record, it is necessary to amend the written statement filed by the defendants. Hence, this

application.

5. Plaintiff objected the application and stated that defendants wants to prolong the matter and there is no substance in this application. Hence, he prayed for rejection of the application.

5. Considering application, say and after hearing both parties following points arise to which I have given findings on the basis of reasons enumerated thereunder :

	POINTS	FINDINGS
1	Whether the proposed amendment is necessary to resolve the real questions of controversy between the parties ?	In the Affirmative
2	Whether defendants are entitled to proposed amendment ?	In the Affirmative.
3	What order ?	Application allowed.

REASONS

6. As to Point nos. 1 to 3 :

Present suit is instituted for removal of encroachment and possession. Proposed amendment is with respect to fact of measurement and institution of suit by defendant no. 2 against plaintiff, which are subsequent events to filing of written statement. Considering the nature of suit i. e., suit for removal of encroachment, proposed amendment is relevant and necessary for the purpose of determining real questions of controversy between the parties. At present, evidence of plaintiff has just started and cross-examination of P.W.1 is deferred. It appears that measurement as stated by defendants was carried out in the year 2016 and suit was filed by defendant no. 2 at the start of last year. Therefore, there is some delay on the part of defendants to file present application. In such

case, application can be allowed subject to costs. Therefore, defendants are entitled to proposed amendment. Hence, points nos. 1 and 2 are answered in the affirmative. Therefore, application deserves to be allowed subject to costs. Hence, in answer to point no. 3, following order is passed.

: ORDER :

1. Application is allowed subject to costs of Rs. 200/- to be paid by defendants to plaintiff.
2. Defendants shall carry out amendment within 14 days of this order.
3. Costs on applicants.

Balapur.
Date:- 14.01.2020

(C. P. Raghuvanshi)
C. J. 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	:	14.01.2020
Signed by Presiding		
Officer on	:	14.01.2020
Uploaded on	:	14.01.2020
