

ORDER BELOW EXH.26 IN R.C.S.NO. 64/2016

1] The plaintiff has filed the present application under Order 6 Rule 17 of the Code Of Civil Procedure for amendment of the plaint. The defendant opposed the application by filling say on the back side of application itself.

2] Perused application and say. Heard Ld. Advocates for respective parties. From the rival contentions of the parties following points arise for my determination to which I have recorded my findings for the reason stated below :

Sr.No.	Points	Findings
1	Whether the proposed amendment can be allowed ?	Yes.
2	What order ?	Application is allowed.

Reasons

3] The Ld. Advocate Mr. B.V. Raut for plaintiff argued that during the pendency of the suit, defendant has made illegal construction over the suit lane. Therefore by the way of proposed amendment plaintiff want to make the avernments in that respect and add the prayer of mandatory injunction. It is submitted that the proposed amendment is a subsequent event

and it will not change the nature of suit in any way. Hence, prayed to allow the application.

4] On the other hand, it is submitted on behalf of defendant he has not made any construction over the suit lane. The proposed amendment is vague, false and frivolous. If the proposed amendment is allowed, that will change the nature of suit and hence prayed to reject application.

5] I have gone through the averments made in the plaint as well as the contentions made in the amendment application. The plaintiff has filed the suit for perpetual injunction. The application for temporary injunction is still pending. It is the contention of the plaintiff that defendant has made illegal construction over the suit lane and therefore, he want to add the prayer of mandatory injunction to remove that illegal construction. In my view, the said amendment is nothing but a subsequent event happened during the pendency of suit. In no way it will change the nature of suit. In my view, the said amendment is essential to decide real controversy between the parties. It will avoid multiplicity of proceeding. No any prejudice will be cause to defendant as he is having liberty to file additional written statement in respect of proposed amendment. Hence, I answer point No.1 in affirmative and in view of point No.2 proceed to pass following order :

ORDER

1] Application Exh.26 is allowed subject to cost of Rs. 200/- (Rupees two hundred only) to be paid to defendant.

- 2] On paying or depositing cost amount, plaintiff to make the necessary amendment within 14 days and file amended copy of the plaint along with copy of defendant.
- 3] In respect of the additional prayer of mandatory injunction, plaintiff to pay requisite Court Fee Stamp.
- 4] If the plaintiff fails to comply the order, it will automatically stands vacated.

Dt. 01-08-2017

Barshitakli.

(Paresh R. Wagdole)

Civil Judge (Jr.Dn.),

Barshitakli.

Certificate

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

Name of Steno :	Mrs. Hemlata N. Dahake, Steno
Court Name :	Civil Judge (Jr.Dn.) & J.M.F.C., Barshitakli
Date :	01-08-2017
Signed by Presiding Officer :	01-08-2017
Uploaded on :	05-08-2017