

R.C.S.No.18/2014
Gajanan Vs. Ramesh

ORDER BELOW EXH.19
(Passed on 22nd September, 2017)

1. By this application defendant is seeking permission for amendment in W.S. as per Order 6 Rule 17 of C.P.C..

2. Defendant submits that, in the W.S. wrong description from southern side east shown of the suit property to that respect he wants to clarify. According to him there lane of 3 x 7 ft. belonging to defendant from northern side. According to him after rejection of T.I. application, the defendant has constructed his wall without leaving necessary space. Hence, he prays for carrying on the amendment.

3. Plaintiff has objected the application by reply. It is stated that the entire description of the suit property will be changing. There is no provision to that effect. The nature of suit will be changing. Present application will fill up the lacunas. The proposed amendment is denied in toto. Therefore as per the relevant provision of law application be rejected.

4. Perused the entire record. Heard. Following points arise for my determination I have recorded my findings for the reasons stated herein below :-

	<u>Points</u>		<u>Findings</u>
1	Whether the amendment sought is just and reasonable ?	-	Yes.
2	Whether the amendment sought will assists in determining the really question in contravercy ?	-	Yes.
3	Whether the amendment sought will change the nature of suit ?	-	No.
4	To whom is will cause prejudice ?	-	To defendant

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5 | What Order ?

- | As per final order.

REASONS

AS TO POINT NOS. 1 TO 4 :-

5. Perused the entire record. Heard. The proposed amendment appears to be clarification of boundaries. The proposed amendments is not the contrary pleadings. The proposed amendment will not change the nature of suit.

6. Certainly proposed amendments are material in nature. But more clear facts of suit will be attributed by way of proposed amendment. The claim will be clearly identifiable after the proposed amendment. In my opinion, the proposed amendment will give more clear description of the claim. Though, defendant is failing to adduce sufficient reasons but this fact does not permit to draw adverse inference against the defendant that at the time of institution of suit defendant is not due diligent. The facts narrated by the defendant in the pleading directly or indirectly clarifies the facts of suit.

7. No substantial prejudice will be causing to the plaintiff at this stage. Plaintiff has having right to cross examination and to contest the amendment sought will avoid the multiplicity of the proceedings. Amendment sought is not unreasonable. It will not change the nature of proceedings.

8. In my opinion parties rights are yet to be adjudicated. If amendment is not carried out it may cause substantial prejudice to the defendant. As substantive rights of parties are involved in the suit. It is always preferable that civil suit shall be decided after detailed evidence and after giving fair opportunity to the parties. Hence in my opinion the amendment sought by

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the defendant is just and reasonable. If the amendment is not allowed then defendant will sustained loss and prejudice. The amendment sought will not change the nature of suit. The amendment will assists in determining the real question in contravercy. It will also avoid multiplicity of litigation.

9. Hence in my opinion defendant shall be given an opportunity to carry out the amendment, to establish their claims. The plaintiff will get the opportunity to cross examine respective witnesses hence it will not caused substantive prejudice to them. Hence in the interest of justice, I proceed to pass the following order.

ORDER

1. Application is Exh.19 is allowed.
2. Defendant shall carry out the amendment till next date.

Patur
Date. 22.09.2017

(V. R. Assudani)
Civil Judge, Jr. Dn., Patur