

Order Below Exh. 32 in R.C.S. No.29/2014.

The plaintiff has filed this present application for the amendment under Order 6 Rule 17 of the Civil Procedure Code.

2. The plaintiff's contention in the present application is as under :-

Present suit is filed praying the relief of declaration and permanent injunction. Defendant by making the encroachment in to the plaintiff's suit property has made illegal construction. In order to determine the encroachment during the pendency of suit Court Commission was appointed. A Court Commissioner has filed his report below Exh 30. In the court commissioner report encroachment has been shown. Thus, in order to brought the fact stated in to the court commissioner's report in respect of encroachment, present amendment is sought. The proposed amendments not contrary to the previous pleading. Hence prayed to allow the amendment application.

3. On the other hand, the defendant by filing say at Exh 33 objected the same. Defendant submitted that he has not made an encroachment in to the suit property. Plaintiff has no right to seek the amendment. Only to prolong the suit the amendment is prayed. Hence on this ground prayed to reject the application.

4. Heard learned advocates for both the sides.

5. Now, what needs to be seen is that, the proposed amendment is necessary for fair disposal of the suit, the proposed amendment is not intended or will not change the nature of the suit and also it will not adversely affect the defendant. Through this present application plaintiff wants to add the facts stated into the court commissioner report at Exh 30. Admittedly during the pendency of suit court commissioner was appointed. The court commissioner has submitted his report below Exh 30. the proposed amendment is in respect of the court commissioner report. Through this present application plaintiff is not adding contrary fact. The proposed amendment will not change the nature of suit, it will not adversely affect the defendant. On adding the proposed fact in to the plaint, will help the court in determining the real controversy between the parties. Thus amendment needs to be allowed. On the proposed amendment defendant will get every opportunity to file his say.

6. The Hon'ble Bombay High Court in the case of **R.K.Patel Engineers and Contractors Pvt. Ltd. Vs. City and Industrial Development Corporation of Maharashtra Ltd., and other**, held that *“Court has wide powers and unfettered discretion to allow the amendment at any stage of the proceedings. Main purpose of the allowing the amendment is to minimize the litigation.”*

7. The present application deserves to be allowed. Hence, the following order :-

ORDER

1. The application is allowed.
2. The Plaintiff is hereby directed to carry out the amendment as prayed within the statutory period.

Date-07/07/2017.
Place-Nandgaon Kh.

(Chetan Jagtap)
Jt. Civil Judge (Jr.Dn.),
Nandgaon Khandeshwar

I affirm that the contents of this p.d.f. file judgment/order are same,word to word as per the original judgment/order.

Name of the stenographer	Shri. A.S. Dhamankar (L.G.)
Name of court	Jt. Civil Court Jr. Dn. Nandgaon Kh
Date of dictation	07/07/2017.
Judgment /Order signed by the P.o.on	07/07/2017.
Judgment/Order uploaded on	07/07/2017.