

ORDER BELOW EXH. 71
(CNR No.MHAU0500 0273 2010)

1. The present application for amendment of plaint was moved by the plaintiff u/o. 6 R.17 of C.P.C..

2. It is the submission of learned advocate of plaintiff that in the present matter the measurement was done by the cadestral surveyor in respect of suit land only. However, the measurement of land of the defendant has to be measured by the surveyor, but he failed to do so. The said fact came into the knowledge of the plaintiff on 26.07.2019, when he scrutinized the case laws. Therefore, in order to avoid the multiplicity of litigation the present belated application for amendment of the plaint is moved. Furthermore, the plaintiff by way of present amendment application, seek, the addition of prayer namely perpetual injunction. Therefore, lastly it is prayed that in the interest of justice and for the avoidance of multiplicity of litigation, the present amendment application be allowed.

3. Per contra defendant filed their say vide Exh.75 and strongly resisted the application. It is the submission of defendant that the matter is at the stage of argument. The plaintiff has no right, at the stage to file the amendment application, after reading the citations. The plaintiff already submitted the measurement map and examined the surveyor. Therefore, the present amendment sought was merely an attempt to fill-up the lacuna i.e. failure of plaintiff to prove her case. Furthermore, there will not be any multiplicity of litigation, if the present application is rejected. It is further submitted that the present application is an attempt of the plaintiff to collect the evidence in his favour. Therefore, lastly it is prayed that the present application be rejected.


5/10/21

4. Perused the record. Heard both sides. I have gone through the case laws relied by the plaintiff. It is admitted fact that the present application of amendment was moved when the matter is posted at the stage of final argument. Before going into the merits of the application, it is necessary to reproduce O.6 R.17 of C.P.C...

O.6 Rule 17- Amendment of pleadings:

“The court may at any stage of the proceedings allowed either party to alter or amend his pleadings in such a manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial”.

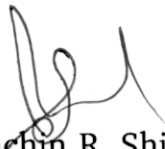
5. Therefore, it is clear that as per proviso the O. 6 R.17, the court is empowered to allow the amendment application after the trial has commenced, only when it comes to the conclusion that in spite of due diligence, the party court not have raised the matter before the commencement of the trial. So far as present application, it appears that the plaintiff came to know about the fact of which the amendment sought after reading the case laws. Furthermore, in the entire application it is nowhere stated that they were not aware about the fact of measurement carried out by the surveyor and therefore they failed to move the present application previously. In fact, on perusal of the plaint, it appears that on the basis of the measurement carried out by the surveyor, the present suit of removal of encroachment and recovery of possession was instituted. Therefore, it is clear that there is no due diligence on the part of plaintiff, to move the present application at the stage of final argument. Therefore, the present application deserves to be rejected on this ground itself.

6. Furthermore, so far as the addition of prayer clause namely for restraining the defendant entering into the suit property and thereby disturbing the plaintiff possession over the suit property, sought by way of present application was itself mentioned in the title column of the plaint in the year 2010. Thereafter, the amendment application was also moved and various amendment carried out by the plaintiff and accordingly vide Exh.25, the amendment plaint was got filed. Therefore, the opportunity was with plaintiff to carry out the present amendment i.e. addition of prayer at the time of previous amendment or later, however, the same was not moved. This conduct of the plaintiff itself shows that the plaintiff was not due diligent. Therefore, considering the proviso of O.6 R.17, I am of the view that the plaintiff conduct in the present suit reflects, she was not due diligent for moving the present application. Therefore, the present application deserves to be rejected. Hence the order:

Order

The amendment application is hereby rejected.

Date:- 05.10.2021


(Sachin R. Shinde)
2nd Jt. Civil Judge (J.D.)
Vaijapur.