

MHAU070006502017



Order below Exh.46 in RCS NO.126/2017
(Thansing Gahire Vs. Sarubai Babasaheb Manjare)

1. This is an application filed by the plaintiff under Order XI Rule 17 of the Code of Civil Procedure, 1908 (for short C.P.C.) for amendment in plaint.

2. It is contention of the plaintiff that in the year 2020-21, due to COVID -19 pandemic the court work was suspended. Therefore, plaintiff is willing to mention the facts in the plaint, which were taken place during that period. Hence, he has filed application and prayed to allow his application for proper adjudication of the matter.

3. Defendant nos. 1, 2, 5 and 6 failed to file their say, therefore, matter proceeded without their say. Defendant no.3 filed his say and opposed the application. The main contentions of defendant no.3 is that the application of plaintiff is not tenable. This is a suit for injunction and if amendment is allowed, it will change the nature of the suit. Hence, prayed to reject the application.

4. Defendant nos. 4 and 6 filed their say and submitted that the present application is not maintainable there is no measurement map on record and in the absence of said map, the application is not maintainable. The suit is filed in the

year 2017 and till passing order of Exh. 5, plaintiff nowhere made any allegation. This application shows that plaintiff want to cure his defects.

5. They have further submitted that by this application plaintiff is claiming relief of possession and this is suit for permanent injunction. If this application is allowed, it will change the nature of suit. The contentions in application are very vague. Hence, defendant nos. 4 and 6 prayed to reject the application.

6. Heard both the sides.

7. The learned advocate for plaintiff has submitted that there is *bandh* in between the land of plaintiff and land of defendants. It will not make any difference, though the nature of suit will change. Amendment is necessary for proper adjudication. The learned advocate for defendant no.3 has submitted that the map of measurement is not on record. Therefore, it can not be said that there is encroachment over the suit property. Original nature of suit will be changed. Hence, prayed to reject the application.

8. I have also gone through the record. It appears that this is suit for injunction. By way of amendment plaintiff is claiming relief of possession and *mesne* profit. Therefore, he is willing to amend title clause of the suit and also willing to add some paras in the plaint.

9. It appears that the cause of action for propose amendment is in the year of 2020. It appears that plaintiff is going to amend the plaint in respect of the facts which were taken place during the pendency of the suit. It is no doubt that originally the suit was permanent injunction. It is the contention of plaintiff that during pendency of suit, possession of the suit property is taken by the defendant. It is also no doubt that the alleged measurement is not on record. However, though there is no measurement map on record, it is duty of the plaintiff to prove all the facts alleged by him. In my opinion, by considering the fact that during pendency of the suit what has happened in respect of suit property is necessary to mention in the plaint. If it is the allegations of plaintiff is in respect of encroachment committed over the suit property, then that facts is necessary to mention in the plaint instead of filing fresh suit.

10. Plaintiff is claiming possession in respect of encroach portion. He is not deleting the prayer of injunction. Therefore, nature of suit will not be changed. Therefore, in my opinion, the amendment is necessary for proper adjudication of matter. Hence, it will proper to allow the application to avoid multiplicity of suit. Hence, I pass the following order.

ORDER

1. Application is allowed subject to costs of Rs.1400/- equally payable to defendants.

2. Plaintiff is directed to carry out amendment on or before next date. He is also directed to furnish copy fo amended plaint forthwith after amendment.
3. Plaintiff is also directed to pay proper Court Fee on relief of new prayer as per law.

Sd/-

Date:-26/10/2023.
Place : Gangapur.

(A. B. Ingole)
2nd Jt. Civil Judge (J.D.)
Gangapur.

CERTIFICATE

I affirm that the contents of this P.D.F. file order is same, word to word, as per the original order.	
Name of the Stenographer :	Rajnandini D.Yadav
Court	C.J.J.D., Court No.2, Gangapur.
Date	26/10/2023
Judgment signed by the presiding officer on	26/10/2023
Judgment uploaded on	27/10/2023