

MHAU080001872024



**R. C. S. No.33 of 2024.**

**ORDER BELOW EXH. 19**

**(Bhagwan Phule Vrs. Raju Raut and 5 Ors.)**

The present application is filed by the plaintiff under Order 6, Rule 17 of the Code of Civil Procedure, 1908 in order to carry out the amendment in the pleadings in the temporary injunction application(vide Exh. 5.) The application is supported by the affidavit produced on the record by the plaintiff at Exh.20

**02.** Read the application. Perused say filed by defendants at Exh.22. Perused the documents produced on the record by both parties, perused the citation produced on record by Ld. Advocate Shri G. V. Dhone for defendants and heard Ld. Advocate Shri. S. R. Kakade for the plaintiff and Ld. Advocate Shri G. V. Dhone for defendants.

**03.** Ld. advocate for the plaintiff is submitted that, the plaintiff filed the present R.C.S. No. 33 of 2024 for the removal of encroachment and the possession of the suit property bearing gat no.35/1. Ld. Adv. For the plaintiff is submitted that, the plaintiff is the owner of the suit property having its area 00 H. 11 R. The said suit property

is acquired by the plaintiff on the account of his share in the ancestral property having its total area 2 H. 74 R. 03 pot-kharaba. The plaintiff is the legal owner and in the lawful possession of the suit property. The plaintiff is averred in the present application that, his father has purchased 12 R. area in the gat no.35/1 from its original owner namely Raju Bhimrao Raut by sale deed bearing registration no.1905/2022. However, there is one common boundaries situated between the suit property and the property owned by the defendants. Defendants are encroached upon the area of 05 R. out of the total area of 11 R. of the suit property owned by the plaintiff. Therefore, the plaintiff filed the present suit against the defendants for the removal of encroachment and the peaceful possession of the suit property.

**04.** Ld. Adv. for the plaintiff submitted that, the the contents in the paragraph nos.2 and 6 in the T.I. application are necessary to be amended in order to correct the errors inadvertently done by him while drafting the T.I.application. Ld. Adv. Is further submitted that, the plaintiff is proposed to carry out the amendment regarding the description of the suit property that “the encroached portion of area of 05 R. out of the total area of the suit property 11 R” in the T.I. application . Moreover, the plaintiff is the proposed to correct the typing mistake of 80 R suit property as 05 R. suit property in the prayer clause encrypted in the T.I. application. The Ld. Adv submitted that, the aforesaid errors are the

typographical errors need to be amended for the efficacious adjudication of the real controversies between the both parties to suit. Thus, the plaintiff is prayed for the permission to amend the pleadings in the T.I. application as aforesaid.

**05.** Defendants are opposed the application by filing their say at Exh.22 and Ld.adv. For the defendants is submitted that, the plaintiff has made the admissions in the plaint regarding the encroached area of the suit property and now the plaintiff can not be allowed to amend the pleadings in the plaint and in the T.I. application.

**06.** Ld. Adv. is relied upon the ratio in the citation in case of SCC. Revision No.38/2024 Mahendra Pratap Singh Vs. Rama Raman and 5 ors, wherein it is observed that, the Court is to determine as to whether admission made in the written submission may be withdrawn due to typographical errors pointed by a new counsel i.e. due to change of counsel. All amendments are to be allowed which are necessary for determining the real question in controversy, provided it does not cause in Justice of prejudice to the other side. The prayer for amendment is to be allowed,-

- i) if the amendment is required for the effective and proper adjudication of the controversy between the parties.

- ii) To avoid the multiplicity of proceedings provided that,-
  - a. by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side.
  - b. the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations.)
- iii) A prayer for amendment is generally required to be allowed unless-
  - a. by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration.
  - b. the amendment changes the nature of the suit.
  - c. the prayer for amendment is malafide.
  - d. by the amendment, the other side loses a valid defence.

**07.** Ld. advocate for the plaintiff is further submitted that the plaintiff is not made any admissions in the plaint. He is only required to amend the typographical mistakes which are appeared in the plaint in inadvertently while typing the contents in the T.I. application.

**08.** From the perusal of the record and after considering the rival contentions raised by both parties to the suit and the circumstances as discussed aforesaid by both parties, it appears that the plaintiff has not made

any admissions in the plaint. The aforesaid citation is not applicable to the present application. It is seen that, the plaintiff is proposed to correct only the typographical errors in the T.I. application regarding the area of the suit property are to be corrected by way of amendment. It is also seen that, the aforesaid amendment are necessary to be carried out for effective adjudication of the suit. Otherwise it will lead to the multiplicity of the proceedings between the parties to the suit.

**09.** Here it is pertinent to note that, in the view of the provision Order 6, Rule 17 of the C.P.C., the Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and all such terms as may be just, and all such amendment shall be made as may be necessary for the purpose of determining the real question of controversy between the parties.

Provided that no application for the 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.

**10.** In the present case in hand, it is seen that the for the appropriate and final adjudication of real question of controversies between the parties to the suit, the amendments proposed to carry out in the in the plaint as

aforesaid by the plaintiff are necessary to be considered. Otherwise it will lead to the multiplicity of the legal proceedings among the parties to the suit. Hence, in order to determine all the existing real controversies among the parties to the suit, the present amendment application is deserves to be allowed in the interest of justice. Hence, the order.

**ORDER**

1. The application at Exh.19 is allowed.
2. The plaintiff is directed to carry out amendment in in the T.I. application (Exh.5) within 14 days from the date of this order subjected to the cost of Rs. 500/- (Rs. Five Hundred only) payable to the T. L. S. A., Sillod.

Date: 29.08.2024

( A. K. Damate )  
Civil Judge, Jr. Dn., Sillod.