

ORDER BELOW EXH.71 IN R. C. S. NO.106/2009
(CNR-MHBI08-000293-2011)

1] Application under Order VI, Rule 17 of the Code of Civil Procedure.

2] Plaintiff submitted that, while the proceeding was pending before the Court some subsequent event took place those are the proposed amendments. This subsequent events are that, the defendant no.1 sold the land to the legal heirs of defendant no.2 by means of sale deed on dated 24/01/2019. The legal heirs of defendant no.2 after purchasing property i.e. land, broken the bandh and made the encroachment on 2 gunthas. The proposed amendment which he want to amend is specifically mentioned in the application and that all are highlighted in bold. One of the proposed amendment is also relating to the prayer clause i.e. for the possession of the encroached land. If the proposed amendment is allowed it will not change the nature of the suit. So he prayed to allow his application.

3] Defendant filed his say and strongly opposed to this that plaintiff led his evidence and he had undergone cross-examination. Defendant had not made any encroachment as contended in application. No any evidence is brought to show about the alleged encroachment. This application is filed to prolong the matter. Hence, application to be rejected.

4] I heard learned advocates appearing for the parties. In advanced to the arguments this court like to go to the pleadings of the parties.

Plaintiff brought this suit for declaration as a owner of the suit property and for perpetual injunction against the defendant.

Defendant by filing the written statement resisted all the contentions made by the plaintiff.

It is not in disputed that, defendant no.1 is on the southern side of the suit property and defendant no.2 on the northern side. It is also not in dispute that he and defendant no.1 by means of sale deed purchased 78 R land out of it they are the owner of 39 R each.

5] The defendant opposed to this application that no any encroachment is made, but he had not strongly opposed or contended about the execution of the sale deed by defendant no.1 in favour of the legal heirs of defendant no.2. It can be said that the contentions which are made by the plaintiff in this application relating to execution of the sale deed by defendant no.1 in favour of the legal heirs of defendant no.2 on 24/01/2019 is not in dispute at present.

It is crystal clear that, until it is pleaded that defendant no.1 executed sale deed in favour of legal heirs of defendant no.2 which took place after presentation of this suit, he cn't lead evidence. The execution of sale deed is during pendency of suit and it is said to be subsequent event. The other proposed amendment relates to the encroachment of 2 gunthas land by the legal heirs of defendant no.2 who purchased land from defendant no.1. Until it is pleaded how the legal heirs of defendant no.2 became the owner of the land which is on one of the side of the suit property till then it can't be said that they are the adjacent land holder on one of the side of the suit property made the encroachment. The legal heirs of defendant no.2 became the owner by means of sale deed. Unless it is specifically pleaded who had made

the encroachment and what to extent on the relevant fact no evidence can be led. The date of the execution of the sale deed by defendant no.1 in favour of legal heirs of defendant no.2 is crucial, because plaintiff submitted in his application that on 2 gunths land encroachment is made that means from that day he is dispossessed from 2 gunthas land. It means, within the limitation from the date of dispossession this application is filed. If supposed the proposed amendment relating to possession of the encroachment land is denied then the ultimate remedy to the plaintiff will be to file a fresh suit for possession of 2 gunthas land which alleged to be encroached by legal heirs of defendant no.2. If the proposed amendment is allowed, it can be final adjudicate about the dispute between the parties i.e. about the declaration, perpetual injunction and possession which the plaintiff alleged. If the proposed amendment is allowed in the opinion of this court it will not change the nature of the suit nor it will cause prejudice to the defendants, because the burden is on the plaintiff to prove the encroachment which he had alleged. Further more, the multiplicity of the litigation will also be stopped and the real controversy and the dispute between the parties can be resolve in the present suit. This court come to the conclusion for the above said reason that this application to be allowed subject to costs for causing some delay. With this, court passed following order.

ORDER

1. Application at Exh.71 is allowed.
2. Plaintiff to carry out the proposed amendment which is specifically mentioned in the application within 14 days from the date of this order.

3. Plaintiff for causing delay to pay a costs of Rs.200/- and same to be credited to Legal Aid.
4. Plaintiff is directed to carry out the proposed amendment within stipulated time given and also to file the copy of the amendment plaint for the parties and court purpose.

Date : 19.07.2019

Sd/-
(R. K. Gujjar)
Joint Civil Judge Sr. Divn.,
Majalgaon.