


MHBI150010082014 	<u>ORDER BELOW EXH. 41 IN R.C.S.No.</u> <u>408/2014</u>
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- 1) This application is filed by plaintiff under Order VI, Rule 17 of the Code of Civil Procedure.
- 2) As per application initially the plaintiff has filed suit for perpetual injunction restraining defendants from causing obstruction to his possession upon the suit property. But, during pendency of the suit by taking disadvantage of sale-deed containing wrong boundaries executed by Sayyad Yasin in his favour, defendant No.1 has committed encroachment upon part of the suit property and started construction thereupon. Therefore, considering subsequent events occurred during pendency of suit, by way of proposed amendment he wants to insert necessary contents about encroachment and prayer as to mandatory injunction for removal of encroachment and for possession.
- 3) By filing say at back leaf of the application defendants have objected to present application. According to them, proposed amendment will change nature of suit. Therefore, application cannot be allowed. Finally, they have prayed for dismissal of the application.
- 4) Perused application, say thereon and record.
- 5) Heard learned Advocates appearing for both sides.
- 6) Admittedly trial of the suit is yet to begin. Therefore, the only question which needs to be looked into is whether the proposed amendment is necessary to determine real controversy between parties and whether it will change nature of suit as argued by the learned Advocate for the defendants.
- 7) As far as objection regarding change in nature of suit is concern, it is necessary to mention that present suit is filed for perpetual injunction

restraining defendants from causing obstruction to plaintiffs possession upon the suit property. Now by way of proposed amendment the plaintiff wants to introduce necessary content as to encroachment committed by defendant No.1 upon suit property and prayer as to mandatory injunction about removal of encroachment and for possession. It is specific case of the plaintiff that in the light of subsequent events occurred during pendency of suit, present application is filed. If during pendency of suit defendants have encroached upon suit property and therefore, the plaintiff intends to introduce prayer of mandatory injunction as to removal of encroachment and recovery of possession it cannot be said that by proposed amendment nature of suit will change. Furthermore, perusal of contents of proposed amendment makes it clear that it will not change nature of the suit. Therefore, objection raised to that effect needs to be rejected.

8) If as per application during pendency of suit defendants have committed encroachment upon suit property, then ultimately proposed amendment is necessary to determine real controversy between parties and to avoid multiplicity of proceedings. Furthermore, delay would not be the ground to reject the amendment application if the proposed amendment is necessary to determine the real controversy between the parties.

9) Considering the overall record reveals that, no prejudice will be caused to defendants if present application is came to be allowed. Furthermore, the proposed amendment is necessary to avoid multiplicity of proceeding and to determine real controversy between parties. By proposed amendment nature of suit will not change. As far as delay in moving present application is concerned that can be compensated by imposing appropriate costs on the plaintiffs. In the result following order is passed:

ORDER

A] Application Exh. 41 is hereby allowed subject to costs of ₹ 1,000/-.

B] The plaintiff is allowed to amend his plaint as per application till next date.

C] If the amount of costs is deposited by the plaintiff till next date same be paid to defendants.

D] In case of failure on the part of the plaintiff either to deposit costs of ₹ 1,000/- or to carry out amendment till next date, except time extended by this Court, will automatically result in rejection of present application without further reference to the Court.

E] The plaintiff is hereby ordered to supply copy of amended plaint on record for the Court as well as for defendants.

F] Costs on applicant.

Date:- 20/02/2020.

(Pankaj M. Bidada)
C.J.J.D., Patoda.

CERTIFICATE

I affirm that the contents of this PDF file Order / Judgment are same word to word, as per the original Order / Judgment.

Name of the Court : C.J.J.D. & J.M.F.C., Patoda.

Judgment / Order signed by the : 20.02.2020

Presiding Officer/me on : 20.02.2020

Judgment / Order uploaded on : 20.02.2020