

RCS 77-2021

Nandu Sonune VS.

Satish Umbarkar and others



Order below Exhibit no. 34

This is an application filed by plaintiff under order VI rule 17 of civil procedure Code for amendment in the plaint.

2. It is contention of the plaintiff that present suit has been filed for recovery of possession of encroached land and for perpetual injunction. The plaintiff had filed an application for appointment of court commissioner for measurement of suit property vide Exhibit no.31 and the said application was allowed by order dated 21/07/2023 and T.I.L.R. Chikhli was appointed as court commissioner for joint measurement of land of plaintiff and defendants. As per the order of Hon'ble court, T.I.L.R Chikhli has carried out the measurement of suit property and has submitted his report on record. As per the said map/report 0.50 R land of plaintiff has been found to be in possession of the defendant no. 1 to 7 and defendant no. 10 and 11. During the pendency of suit defendants have encroached upon suit property on 16/12/2023.

3. It is further contended that plaintiff has filed present suit for recovery of possession of land admeasuring 50 R from defendant because as per the measurement carried by T.I.L.R

office dated 18/12/2023, defendant have encroached upon 50R land of plaintiff. Therefore, plaintiff wants to carry out amendment in his pleading as per the court commissioner report by inserting necessary pleadings in title clause and by inserting para no. 8A after para no. 8. Plaintiff also sought amendment in prayer clause by amending prayer Clause B. So also, plaintiff wants to correct the name of defendant no.1 as Santosh instead of Satish. It is further contended that the proposed amendment would not change the nature of the suit. Plaintiff prayed for allowing the application.

4. Defendants have contested the application by filing reply on the application. It is submitted by defendants that the proposed amendment would change the nature of suit. and defendants would get prejudiced if the proposed amendment is allowed. They prayed for rejection of the application.

5. Perused application and say filed on it. Perused record. Heard both sides. It is the principle of law that the court may allow either party to amend their pleadings subject to condition that the nature of suit shall not be changed. The object behind the said principle is to determine the real question of controversy between the parties. Order VI Rule 17 of the Civil Procedure Code, 1908 provides as under ;

"Amendment of pleadings" – The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such 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 of controversy between the parties;

Provided that no application for amendment shall be allowed after 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 trial."

6. Thus, from the aforesaid legal provision it transpires that Order VI Rule 17 of the Civil Procedure Code, 1908 consists of two parts. The first part leaves to the discretion of the Court to order amendment of pleading. The second part is imperative and requires the court to allow the amendment which is necessary for the purpose of determining real question of controversy between the parties. The proviso provides that the amendment after commencement of trial is permitted if the court comes to the conclusion that in spite of due diligence, the party could not have raised matter before commencement of trial.

7. The present suit has been filed for recovery of possession of encroached land. Vide order below Exhibit no. 31 dated 21/07/2023, my Ld. Predecessor had appointed T.I..L.R. Chikhli as court commissioner for joint measurement of the field properties of plaintiff and defendants. Accordingly, court commissioner was appointed and report of court commissioner has been filed on record. The report of concern court

commissioner reveals encroachment to the extent of 0.40 R area of plaintiff by defendant no.1 to 7, encroachment to the extent of 0.10 R area of plaintiff by defendant no.10,11.

8. It is the principle of law that the court may allow either party to amend their pleadings subject to condition that the nature of suit shall not be changed. The object behind the said principle is to determine the real question of controversy between the parties. The defendants had contended that nature of suit would be changed if proposed amendment is allowed. The present suit has been filed for removal of encroachment. Therefore, The proposed amendment would not change the nature of the suit. The amendment sought and court commissioner report are subject to proof and defendants would not be prejudiced as they will get opportunity to defend the suit. I am of the view that the proposed amendment is necessary for complete adjudication of dispute between the parties. Moreover, correcting the name of parties is necessary for binding the force of adjudication on the parties. Hence, in view of above said reasons the application deserves to be allowed with cost. Hence, I pass following order.

ORDER

1. The application is allowed subject to cost of Rs.300/-.

2. The plaintiff shall carry out amendment within 14 days from the date of this order as per Order VI Rule 17 of Civil Procedure Code and comply accordingly.

Date :- 05.02.2026

Place :- Chikhli

(Smt. M.V. Poul)

2nd Jt. Civil Judge, Jr.Dn.Chikhli