



ORDER BELOW EXH - 20
(Passed on 25th day of October - 2023)

This is an application filed by plaintiff for amendment in the plaint under Order VI Rule 17 of the Code of Civil Procedure, 1908 (*Hereinafter referred as the "Code" for sake of brevity*).

2] Perused the application. Plaintiff contended that, the plaintiff has filed the present suit against defendants for Permanent Injunction. It is submitted by plaintiff that after service of suit summons defendants appeared and filed their reply and written statement. However, after filing of the suit, more particularly in the month of July 2021, defendants took the possession of the suit land and prevented the plaintiff from entering in the suit land. Therefore, in the present suit plaintiff wish to claim possession of the suit land and hence sought for amendment.

3] The plaintiff submitted that the said fact is very important and it needs to be mentioned. Therefore, plaintiff wish to amend the plaint by adding para No.4-A in the plaint along with prayer clause A-1. It is submitted that the proposed amendment will not cause any serious prejudice to defendants. With these submissions, plaintiff prayed for allowing the same.

4] Defendants filed their say on the back-leaf on the present application and thereby strongly opposed the application and prayed for rejection of the application.

5] I have gone through the application and say filed by learned advocate for defendants. Heard learned advocates for plaintiff and defendants. Under Order VI rule 17 of the Code, where the amendment does not alter the nature of suit or substitute new cause of action in the original plaint, then it is always open for the Court to allow the amendment of pleadings, provided that no prejudice is caused to the other side, which can be compensated by the costs. The object is to determine real question in the controversy.

6] It is seen from the record that present application for amendment in the plaint is filed before commencement of the trial and it is apparent that, the cause for filing the application for amendment is arose after filing of the present suit. The fact regarding proposed amendment arose during pendency of the suit and therefore, the said could not be incorporated by the plaintiff at the time of filing the suit. With due diligence, plaintiff obtained the information with regard to the proposed amendment and without causing further delay prayed for amendment by moving present application.

7] Considering the subject matter of the suit and relief

claimed, the plaintiff is expected to specifically plead before the Court. However, inspite of due diligence, the plaintiff could not mentioned the fact regarding proposed amendment.

8] Absence of specific pleading in the plaint would always hamper the case of plaintiff. Therefore, to bring more clarity in the pleading of the plaintiff, the proposed amendment can permitted to be allowed. Moreover, the proposed amendment is necessary for the purpose of determining the real question in controversy between the parties. As far as cost is concerned, no doubt the proposed fact could have been mentioned by the plaintiff while drafting the plaint. However, such facts could not be gathered by the plaintiff as it has taken place during pendency of the case. In such circumstances, it is not just and proper to impose cost upon plaintiff while allowing the present application. As also, the proposed amendment seems to be *bonafide* one. Moreover, proposed amendment in the plaint will not cause any prejudice to defendants. Hence, I am inclined to allow the application for the reasons mentioned above. Resultantly, I pass following order:

ORDER

1. The application under Order VI Rule 17 of the Code of Civil Procedure is allowed.

2. Plaintiff is directed to carry out the necessary amendments in the plaint, within stipulated period as prescribed.

Place :- Rajura
Date :- 25/10/2023

(Nikhil L. Hemne)
Jt. Civil Judge, Junior Division,
Rajura, Dist. Chandrapur