

ORDER BELOW EXH.47 IN R.C.S.NO. 20/2022

The present application is filed by the plaintiffs for carrying out amendment in the plaint under Order VI Rule 17 of the Code of Civil Procedure.

2] It is averred by the plaintiffs that the present suit is filed against the defendants for the relief of permanent injunction, wherein they also filed application at Exh.5 for temporary injunction. The Court passed order below Exh.5 on 11.04.2022 and restrained defendant No.1 from making encroachment and construction on the area of 10 x 14 situated in front of the house of defendant No.1. However, defendant No.1 completed the construction work. Therefore, the plaintiffs filed Civ.M.A.No. 134/2022 in the Court and it is pending. It is necessary to remove the said encroachment. Therefore, the plaintiffs want to carry out amendment to that effect in para 5 and 7 of the suit plaint. Hence they prayed to allow the application.

3] Defendant No. 1 filed his say on the application. It is contended that the plaintiffs filed the false application to prolong the trial. The suit is for the hearing and as per Order VI Rule 16, if the trial is commenced, the amendment cannot be allowed. Hence, he prayed to reject the application with costs of Rs. 10,000/-.

4] Perused the record. Heard learned Advocates for both the side.

5] In order to decide the present application, it is necessary to go through the provision of Order VI Rule 17 of the Code of Civil

Procedure. Order VI Rule 17 of the Code deals with amendment of pleadings. The proviso to said Rule prevent application for amendment being 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 trial. The proviso, to some extent, curtails absolute discretion to allow amendment at any stage. If application is filed after commencement of trial, it has to be shown that in spite of due diligence, such amendment could not have been sought earlier. The object is to prevent frivolous applications which are filed to delay the trial.

6] On perusal of the record, it appears that the plaintiff filed the present suit for the relief of permanent injunction, wherein the plaintiffs filed application at Exh.5 for grant of temporary injunction. The said application was allowed on 30/04/2022 and the defendant No.1 was restrained from making construction over the public road, which would cause obstruction to the use of the plaintiffs. My learned Predecessor framed issues at Exh.41 on 07/02/2023. Thereafter the present application came to be filed. The plaintiffs have not filed their evidence affidavit yet. The completion of the alleged construction by defendant No.1 is the subsequent event. The trial is yet to commence. Therefore, it is necessary for the plaintiffs to claim relief in that respect. The proposed amendment if allowed, would not change the nature of the suit. On the contrary, it will help the Court to decide the real controversy between the parties. The proposed amendment if allowed, would not cause prejudice to defendant No.1 as he will have an opportunity to adduce his evidence. Therefore, the application deserves to be allowed. Hence, I pass the following order:

ORDER

1. The application is allowed.
2. The plaintiffs are directed to carry out amendment as prayed, within 14 days from the date of this order.
3. The plaintiffs are directed to supply the copies of amended plaint as per Rules.
4. The plaintiffs shall pay necessary court fees in respect of the relief claimed by them as per rules.

Sdxxx

Date :- 08/08/2024.
Shindkheda.

(M.R.Kayastha)
Civil Judge,J.D.,Shindkheda.

4 (Order below Exh.47 in RCS No. 20/2022)

CERTIFICATE

I certify that the contents of this PDF file are word to word as per Original Order.

Name of the Stenographer: Rajesh V. Sonawane
Name of the Court : Civil Court J. D., Shindkheda,
PDF Uploading date : 08/08/2024.

Sd/-xxx
Stenographer, Grade-3