

**ORDER BELOW EXH. 38**

Present application filed by plaintiff under O.6, R.17 of CPC for amendment in plaint. Plaintiff submitted that present suit is filed by him for permanent injunction. During pendency of suit defendant taking benefit of summer vacation, 2015 and illegally encroached on the suit property having area east-west 5 feet and north-south 5 feet. Encroached area is shown in blue colour in amended plaint map. Defendant had made encroachment on said area and constructed wall of bricks having roof on it. Said encroachment is illegal and needs to be removed by mandatory injunction. Therefore, plaintiff filed present application for incorporated said facts in plaint. He also seek for amendment in para No. 9 and 12 in respect of valuation and prayer clause of mandatory injunction.

2. Defendant filed his say and submitted that the contents of application are false and bogus. The defendant made construction on his own land and plaintiff has knowledge about it. Then also plaintiff filed present application only to harass him. Therefore, present application may be rejected. If application will allow then it will be allowed to subject heavy costs.

3. Perusal of amendment application shows that plaintiff seek amendment for bring subsequent event of alleged encroachment on suit property In case law of ***Balkrushina Elwande vs. Shankar Sable and ors. 2006 (6) Mh.L.J. 224***. In this case law Hon'ble Bombay High Court held that *“the plaintiff, by the proposed amendment, wanted to bring this subsequent event on record and as a consequence of those subsequent events, desired to seek possession of the suit property from the plaintiffs. The proposed amendment did not change the nature of the suit. In fact, by allowing the amendment application, multiplicity of proceedings could have been avoided”*. Perusal of above observation of Hon'ble High Court shows that amendment of subsequent event is permissible if, it is necessary for

determine the real controversy between the parties. In our case, without bringing the proposed amendment facts on record, real controversy between party will not be determined. Per contra, if application rejected it will create multiplicity of proceeding and complication.

5. It is well settled principles that all amendment which are necessary for determination of the real controversy in the suit should be allowed. If, proposed amendment not alter the nature of suit and cause any prejudiced to other side. In present case, amendment sought by plaintiff is necessary to determine real controversy between parties as the proposed amendment is in respect of subsequent event of encroachment. Therefore, considering above all discussion, in my view it would justifiable to allow present amendment application. However, it is necessary to consider that as per plaintiff encroachment was made in Summer of 2015, but plaintiff filed present amendment application after two years i.e. in October, 2017. Therefore, it is also necessary to impose costs on plaintiff for filing present application after such long delay. Hence, I pass following order.

**ORDER**

- {1} The application at Exh. 38 is hereby allowed subject to costs of Rs. 500/-.
- {2} Costs amount of Rs. 500/- be paid to defendant.
- {3} The plaintiff should be carried out amendment as prayed within 14 days from the date of order and filed amended plaint on record.

Amgaon  
Date : 03.09.2018

(A. S. Deshmukh)  
Civil Judge (Jr. Dn.)Amgaon