

MHJN070004912013



RCS No.98/2013
Anusayabai Vs. Sitabai and others

ORDER BELOW EXH NO.21

This is an application of defendants under Order VI Rule 17 of the Code of Civil Procedure, 1908.

2. Read application and reply. Perused record, documents filed. Heard Ld. Counsel for plaintiff.

3. This suit is for permanent injunction. The defendants submits that the necessary insertion of word 'southern' instead of the word 'northern' in para No.1, page No.2 of line No.1 of the written statement. The defendant No.1 to 3 submitted that the sale deed No.535/2000 mentions the southern side of the suit property, therefore the above amendment is necessary.

4. The plaintiff filed her say overleaf. The plaintiff objected the proposed amendment on the ground that the 7/12 extract shows the ownership of the plaintiff and the possession of 1 R land is in the possession of defendant. The application is not tenable and prayed to reject.

5. Perusal of the record, application and say. It is evident that the defendants have filed their written statement and mentioned northern side in para No.1 in line No.1. However, perusal of the sale deed No.535/2000 filed on record reveals southern side land as the subject of the sale deed. It also appears that the court commissioner was directed to measure the suit land of plaintiff Gat No.30 and land of defendants

Gat No.31, wherein acquisition of land by the Government for Jivrekha Project, Tembhurni on 04/08/2009 is made. This fact is substantiated by the letter filed with the application at list Exh.23. The fact of acquisition of land is the matter of trial and can be established by adducing admissible evidence. However, the suit is for removal of encroachment and the plaintiff has mentioned that the defendant No.1 to 3 had encroached on his land to the extent of 2 R on the southern side. This clearly shows that the relief prayed by the plaintiff regarding making of encroachment at the hands of defendants is on the southern side. Therefore, merely mistake in pleading made by the defendants as to the side of the suit land as north instead of south does not disentitle to the defendants to move proposed amendment. The defendant No.1 to 3, in view of above facts and circumstances are entitled to make amendment in the written statement as para 3-A. Moreover, I do not find any legal hurdle nor the proposed amendment change the nature of the suit. Therefore, in order to adjudicate the matter in controversy between the parties finally the proposed amendment is necessary to be included. Hence, I pass following order.

Order

1.	The application is allowed.
2.	Defendants to carry out necessary amendment as para 3-A forthwith in the written statement and supply requisite number of copies of amended written statement.

Dt.19.06.2025
Jafrabad

[A.N.Khatade]
Civil Judge (Junior Division),
Jafrabad.

CERTIFICATE

Affirm that the contents of this PDF file are word to word as per original order.

Date 19/06/2025

Sd/-xxx
(Ahmad Shaikhh)
Stenographer.