

MHKO130001222012



Order below Exh. 103 in R.C.S. No. 137/2012.

(Mahadev Patil Vs Vilas Patil)

1. This is an application filed by the plaintiffs under Order 6 Rule 17 of the Code of Civil Procedure for getting permission to add suit property- C by way of amendment.

2. It is submitted by the plaintiffs that they have to add the North-South road of 23x7 feet size, which is situated among the suit property A and B, as suit property -C. They inadvertently failed to add said road as suit property -C, but they have pleaded about it in plaint Para No. 5. They have already made prayer about said road in the prayer Clause 14-C. The proposed amendment will not going to change the nature of suit. It is necessary for adjudication of real question in controversy. Hence, they filed this application.

3. On the other hand, defendant No. 1 and 2 filed their say vide Exh. 104 and resisted this application. They submitted that the suit property-C is not in existence. The proposed amendment will change the nature of suit. The application is not tenable as per Order 6 Rule 17 of C.P.C. The plaintiffs already carried out amendment vide order below Exh. 60 and 100. So, this another amendment application is not tenable. Hence, they prayed for rejection of present application.

4. Perused the application and say filed thereon. Heard learned Advocates for both sides. Studied Order 6 Rule 17 of the Code of Civil Procedure. Defendants submitted that the amendment which change the nature of suit is not permissible in the eyes of law. In support of this submission, they referred the case of **Jagganath Vs. Chander Bhan reported in AIR 1988 Supreme Court 1362**. It is settled law that the amendment which change the nature of suit is not permissible under Order 6 Rule 17 of CPC. The issues have been framed. But evidence of parties are yet to be begun. So, in real sense, the trial is yet to be commenced. Therefore, here only it is necessary to see whether the proposed amendment is necessary for determination of real question in controversy or whether it is going to change the nature of suit. This suit is for mandatory and perpetual injunction. It is seen from the plaint Para No. 5 and prayer clause 14-C that the plaintiffs have already pleaded about the road, which plaintiffs intended to refer as suit property-C. Therefore, the proposed amendment is seen necessary for avoiding the further complications and multiplicity of proceeding as well. Further, the proposed amendment is not going to change the nature of suit. The trustworthiness of the proposed amendment needs to be considered after trial. However, before this application, the plaintiffs moved application for amendment vide Exh.100 on 26/09/2018. At that time, plaintiffs could apply for present proposed amendment, but they failed. This shows negligent conduct of plaintiffs towards Court proceeding. It needs to be considered at the time of imposing costs. Hence, following order is passed.

ORDER

1. The application is allowed subject to cost of Rs.1000/- (Rs. One Thousand only) The amount of cost be paid by plaintiffs to defendants.
2. The plaintiffs are directed to carry out the amendment as prayed within the statutory period.

Date-07/09/2019.
Place-Kagal

(V. H. Khedkar)
Jt. Civil Judge Jr.Dn., Kagal