

Order Below Exh.36 in R.C.S. No.79/2014.

1. The plaintiff has filed this present application for the amendment of plaint as per Order 6 Rule 17 of the Civil Procedure Code.

2. **The plaintiff's contention in the present application is as under :-**

The plaintiff has filed the present suit praying the relief of perpetual injunction and recovery of possession against the defendant. During the hearing of the suit Court Commission appointment order is been made and thereby T.I.L.R. Kagal, is been appointed to measure the suit property. After completion of the measurement the concerned office has submitted its report along with map into the Court. In the Court Commissioner map, 94 square meter's encroachment is been shown made by the defendant into the plaintiff's property. Hence, in order to incorporate the aspects shown into the Court Commissioner report and map into the present suit, present amendment application is been filed. Through the present application plaintiff sought to include the contents of map into the plaint. The proposed amendment will not change the nature of the suit and will not adversely affect the defendant. Hence, on these ground prayed allow the amendment application.

3. On the other hand, the defendant has filed his say at Exh.41 and objected the present application. His submission is as under :-

The Court Commissioner's report and map is illegal and void. While fixing the boundary between the two gat number, those gat numbers joint measurement needs to be made. The same is not followed by the Court Commissioner. On the basis of false map, the Court Commissioner has made an wrong measurement. The proposed amendment sought on the basis of wrong measurement cannot be allowed. The nature of the suit is going to change. Hence, prayed to reject the application.

4. Heard learned Advocate for both the sides.

5. Now, what needs to be seen is that, the proposed amendment is necessary for fair disposal of the suit, the proposed amendment is not intended or will not change the nature of the suit and also it will not adversely affect the defendant. As per the common order below Exh.26 and 28, T.I.L.R. Kagal is been appointed as a Court Commissioner for the measurement of land Gat No.31 and 2204. As per the order concerned office after measurement submitted its report at Exh.34. Along with report map has been produced. Present amendment is been sought in respect of the contents of map. The plaintiff has every right to make the amendment into his plaint on the basis of the Court Commissioner report which is also an subsequent event. The learned Advocate for the defendant submitted that the measurement is not been properly made, Court Commissioner's report is illegal and void and therefore, on the basis of the same amendment cannot be allowed. The legality and validity of the measurement and the Court Commissioner report along with map cannot be gone into at

this stage. While deciding the amendment application the merits into the suit should not be gone into. On the basis of subsequent event the present application is been filed. The objections in respect of Court Commissioner's report cannot be gone into at this stage. Present defendant has every right to counter and challenge the legality of the Court Commissioner report at the hearing by adducing the oral and documentary evidence. While deciding the amendment application the legality of the Court Commissioner report and its map need not to be gone into. More importantly, the defendant has every right and opportunity to submit his additional written statement in respect of the amendment and also has the opportunity to adduce the evidence in that respect. The proposed amendment is not contrary to the previous pleading of the plaintiff. The proposed amendment will not change the nature of the suit and will not adversely affect the defendant.

6. Hon'ble Supreme Court in the case of the **Ganga Bai v. Vijay Kumar, 1974 (2) SCC 393** ; wherein it was rightly observed :- *“The power to allow an amendment is undoubtedly wide and may at any stage be appropriately exercised in the interest of justice, the law of limitation notwithstanding. But the exercise of such far-reaching discretionary powers is governed by judicial considerations and wider the discretion, greater ought to be the care and circumspection on the part of the Court.”*

7. The Hon'ble Bombay High Court in the case of **R.K.Patel Engineers and Contractors Pvt. Ltd. Vs. City and Industrial Development Corporation of Maharashtra Ltd., and other**, held

that “Court has wide powers and unfettered discretion to allow the amendment at any stage of the proceedings. Main purpose of the allowing the amendment is to minimize the litigation.”

8. The Hon’ble Bombay High Court in the case of **Prabhakar s/o Warlji Uike & others Vs. Bhaurao s/o Narayanrao Pogale, 2010(6) Mh.L.J.824** held that, “ Amendment of pleadings permissibility- Amendment in the pleadings is permissible if it can enable Court to finally determine the real controversy between the parties.”

9. Perused the ratio laid down by the Hon’ble Supreme Court and the Hon’ble High Court as above. Thus, the present amendment will not change the nature of the suit, it will not affect the defendant adversely. The present application deserves to be allowed. Hence, the following order :-

ORDER

1. The application is allowed.
2. The Plaintiff is hereby directed to carry out the amendment as prayed within the statutory period.

Sd/-

Date-03/02/2017.
Place- Kagal

(Chetan Jagtap)
Jt. Civil Judge Jr.Dn., Kagal

I affirm that the contents of this P.D.F. file Judgment/Order are same, word to word, as per the original Judgment/Order.

Name of the Stenographer	Sandip Maruti Patil (L.G.)
Name of Court	Jt. Civil Court & J.M.F.C. Kagal
Date of Dictation	03/02/2017.
Judgment signed by the P.O. on	03/02/2017.
Judgment uploaded on	06/02/2017.