

**Order Below Exh.56 in R.C.S. No.187/2015.**

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

2. **The plaintiffs claim in present application is as under -**

The main suit is filed for possession. It is claimed that the suit property is possessed by the plaintiffs. The defendant No.1 to 3 tried to obstruct and dispossess the plaintiffs from the suit property before and after filing of the suit. Therefore, the plaintiffs have filed temporary injunction application below Exh.13 and it was allowed. Against the said order the defendants have preferred Misc. Civil Appeal No.133 of 2016 which came to be rejected. Therefore, by way of present application the plaintiffs wants to add relief to that regard. By way of proposed amendment the plaintiffs wants to add para 6A that – "यातील प्रतिवादी नं. १ ते ३ यांनी दावा मिळकतीमधील .....कायम मनाईची मागणी केलेली आहे."

The plaintiffs also wants to add facts about valuation of the suit in Para No.8.

The plaintiff through proposed amendment further wants to add in the prayer clause after para No.12 by adding Sub Para 12-1A as "यातील प्रतिवादी नं.१ ते ३ यांनी दावा मिळकतीमधील.....प्रतिवादी नं.१ ते ३ यांचविरुद्ध कायम मनाई करणेत यावी."

The proposed amendment sought by the plaintiffs are because of subsequent acts of defendants of disturbing the peaceful

possession of the plaintiffs. The amendment sought by the plaintiffs is necessary for deciding the real controversy between the parties. If the proposed amendment is allowed no harm would be caused to the defendants. The amendment sought is formal in nature. Therefore, prayed to allow the proposed amendment.

3. As against this, the defendants have filed their say at Exh.60 and objected the application. They specifically submitted that only the defendant No.1 has possession over the suit property. The amendment sought would change the nature of the suit. There is bar of due diligence to the present application. Only to harass the defendants and to prolong the matter the present application is filed. The matter is fixed for filing of affidavit by the plaintiffs, but the plaintiffs have not filed the same. The description of the suit property made in the plaint and temporary injunction are different and therefore, the plaintiffs cannot sought amendment. Therefore, cost of Rs.25,000/- be imposed to the plaintiffs. Therefore, prayed to reject the application.

4. Heard learned Advocates for both the sides.

5. The following points arise for consideration, the Court has recorded its findings and reasons as follows :-

No.	Points	Finding
1.	Whether plaintiffs are entitled for proposed amendment as prayed ?	Yes.
2.	What order ?	Application is allowed.

## **REASONS**

### **As to Points No.1 and 2 :-**

6. The main suit is for obtaining possession as per partition deed. Now, by way of proposed amendment the plaintiffs wants to add subsequent facts which have happened after filing of the suit. It is claim of the plaintiffs that during the pendency of suit the defendant Nos.1 to 3 are trying to obstruct and dispossess the plaintiffs as shown in the proposed portion of the amendment. Therefore, the plaintiffs by way of proposed amendment wants to add subsequent events which have happened during the pendency of suit. As the main relief are for recovery of possession and more importantly, during the pendency of suit, the Exh.13 the temporary injunction application was too granted in favour of the plaintiffs, then, in such fact situation, the proposed amendment would help in determining the real controversy involved in the suit. The amendment in the relief sought is similar to the previous relief. So, by such amendment nature of suit would not be changed. Moreover, the Court on reading of the application and the main suit is of view that the proposed amendment if allowed would avoid the multiplicity of proceedings. No prejudice would cause to the defendants as their legal right would not be taken away to defend themselves or file consequential written statement. The suit is required to be determined on the basis of the facts existed on the date of the filing of suit. However, the Court has to take in to account subsequent events in order to avoid further litigations or shorten the litigations or to preserve, protect and safe guard rights of both the parties and to subserve the ends of justice.

Accordingly, the Court answer point No.1 in the affirmative and in answer to point No.2, pass the following order:-

**ORDER**

1. The application is allowed.
2. The plaintiffs are hereby directed to carry out the amendment within statutory period.

Sd/-

Date-28/02/2018.  
Place-Kagal

(A.A.K. Shaikh)  
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	28/02/2018.
Judgment signed by the P.O. on	28/02/2018.
Judgment uploaded on	01/03/2018.