

Order below Exh.55 in Regular Civil Suit No.2/2010.

This is an application moved by the plaintiffs under Order 6 Rule 17 of the Code of Civil Procedure for amendment of the plaint.

2) Heard learned advocate Shri. R.P. Bandiwadekar for the plaintiffs and learned advocate Shri. L.V. Bhatkande for the defendants. Perused application and say.

3) Plaintiffs contended that in spite of the order of status-quo passed by the Court the defendants by making encroachment over the suit property made the structure of column and netting for the purpose of construction. Hence, by way of this application, the plaintiffs want to incorporate the pleading that “during the pendency of suit, defendants by making illegal encroachment over the suit property made the construction of column. Hence, plaintiffs sought the relief of mandatory injunction and recovery of vacant possession of the suit property. Plaintiffs further sought the amendment that plaintiffs preferred appeal against the order of City Survey before Superintendent of Land Records, Sindhudurg during the pendency of the suit. Hence, the application.

4) The defendants contested the application by filing their say vide Exh.56. Defendants strongly opposed the application. Defendants contended that this application is filed with an intention to prolong the matter and cause financial loss to the defendants. Defendants further contended that they did not make construction over the suit property. Hence, the question of amendment does not arise. Defendants further contended that if application is allowed, then the nature of the suit will be changed and prejudice would be caused to the rights of the defendants. Hence, the application is liable to be rejected.

5) The perusal of plaint revealed that plaintiffs sought the relief of perpetual injunction that defendants be restrained from making construction over the suit property. However, by way of this application, plaintiffs want to incorporate the pleading that “during the pendency of the suit, the defendants by making encroachment over the suit property created the structure of column and netting for the purpose of construction”. Hence, plaintiffs sought the relief of mandatory injunction and recovery of vacant possession of the suit property. The relief of mandatory injunction and recovery of vacant possession of suit property is ancillary relief to the relief of perpetual injunction.

6) Furthermore, the plaintiffs on oath contended that by making encroachment over the suit property, the defendants created the structure of column during the pendency of the suit. Hence, these facts being happened during the pendency of the suit. Though the plaintiffs have filed affidavit of examination-in-chief. But considering this factual position, proviso of Order 6 Rule 17 of the Code of Civil Procedure would not bar the application.

7) Furthermore, if the application is allowed, then the nature of the suit will not be changed. On the contrary, it will help to determine the real controversy between the parties. Moreover, if the application is allowed, then defendants have an opportunity to file their additional written statement. Hence, in my considered view, if application is allowed no prejudice would be caused to the defendants.

8) However, as plaintiffs have caused delay to sought the amendment. Hence, plaintiffs have to compensate to the defendants for the delay caused. Hence, I hold that application deserves to be allowed subject to costs. Therefore, I proceed to pass the following order.

Order

1. The application is allowed subject to payment of costs of Rs.1,000/- (Rupees one thousand only) to the defendants.

2. After compliance of above clause, plaintiffs are permitted to carry out the amendment as prayed.

3. Plaintiffs are further directed to file the copy of amended plaint on or before next date.

4. The defendants are at liberty to file their additional written statement.

5. Failure to comply above order on or before next date, the application shall be deemed to be rejected.

Sd/-

(M. D. Thombare)

Civil Judge, Jr. Dn., Chandgad.

Dated:- 15/12/2016.

CERTIFICATE

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

Name of the Stenographer	Shri. V. L. Tatkod, L. G. Stenographer.
Name of Court	Shri. M.D. Thombare, Civil Judge, Junior Division and Judicial Magistrate, First Class, Chandgad.
Date of Dictation	15/12/16
Judgment/Order signed by the P. O. on	15/12/16
Judgment/Order uploaded on	15/12/16