

Order below Exh. 43 in Regular Civil Suit No. 28/2005.

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

2) Heard. Perused the application and say of defendant No. 1 filed at Exh. 44.

3) Plaintiffs contended that they inadvertently mentioned the area 42-R of suit property Gat No. 42/5 instead of 84-R in para no. 1 of the plaint. Hence, by way of this application they want to correct the area of Gat No. 42/5. Hence, the application.

4) The learned advocate for the defendant No. 1 submitted that suit is pending since 2005. The suit is for hearing stage. If application is allowed, the irreparable loss would be caused to the defendant No. 1. Hence, the application is liable to be rejected.

5) Admittedly, the list of witnesses or affidavit of plaintiffs is not filed on record. Hence, in view of ratio laid down in Vidyavati's case I hold that trial of suit is not yet commenced.

6) Furthermore, by way of this amendment plaintiffs want to correct the area of suit property No. 42/5. If the area of suit property is corrected, then no harm would be caused to the defendants. On the contrary, the defendants would have an opportunity to file their additional written statement.

7) Furthermore, if application is allowed, the nature of suit would not be changed. On the contrary, it will help to determine the real controversy between the parties. Therefore, application deserves to be allowed.

8) Admittedly, the plaintiffs moved this application after lapse of 10 years. Hence, the plaintiffs are liable to compensate to the defendant No. 1 as well as the Government for delay caused. Hence, the application deserves to be allowed by imposing costs. Therefore, I proceed to pass the following order.

O r d e r

- 1) Application is allowed subject to depositing costs of Rs.500/- (Rupees five hundred only) in the Court on or before next date.
- 2) After depositing costs of Rs.500/- in the Court, the assistant superintendent is directed to pay costs of Rs.300/- to the defendant No. 1 and credit remaining amount of Rs.200/- to the Government.
- 3) Plaintiffs are permitted to carry out the amendment as prayed on or before next date and file the copy of amended plaint.
- 4) Failure to comply the 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:- 09/03/2016.

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. Tadkod, L. G. Stenographer.
Name of Court	Shri. M.D. Thombare, Civil Judge, Junior Division and Judicial Magistrate, First Class, Chandgad.
Date of Dictation	09/03/16
Judgment/Order signed by the P. O. on	09/03/16
Judgment/Order uploaded on	10/03/16