

Order below Exh.39 in Regular Civil Suit No.69/2014.

This is an application moved by the plaintiff under Order 6 Rule 17 of the Code of Civil Procedure.

2) Heard learned advocates B.G. Kamble for the plaintiff and G.N. Dalavi for the defendant. Perused the application and say vide Exh.40.

3) Plaintiff has filed the application with intend to incorporate the pleading that “eastern-western area at the middle and south side of the suit property is 18.3 feet and eastern-western side area of north side is of 24.3 feet. Accordingly entire area of the length is of 211 feet”. Therefore, by way of this application plaintiff wants to incorporate the description of the suit property.

3) The defendant by filing say vide Exh.40 opposed the application. Defendant denied the averments made in the application. According to defendant, the application vide Exh.5 filed by the plaintiff was rejected on 02/01/2015. It is the claim of plaintiff that defendant has made encroachment from eastern side to the extent of six feet and now at this stage, the plaintiff wants to change the boundary marks of the suit property. Therefore, this application moved by the plaintiff only with intend to delay the matter. By way of this application plaintiff wants to bring on record new case. Because if at the time of filing suit plaintiff was having measurements then he could have mentioned the same in the plaint. But he did not give those measurements at the time of institution of suit. Plaintiff has filed this application with intend to delay the matter. Hence, the application is liable to be rejected.

5) The perusal of record revealed that yet the trial of the suit is not commenced. The application filed by plaintiff is only to incorporate the clear description of the suit property and nothing but. Hence, if the application is allowed, then no prejudice or harm would be caused to the defendant. On the contrary, defendant has an opportunity to file his additional written statement and rebut the evidence of the plaintiff through his cross-examination. Hence, if the application is allowed, then nature of the suit will not be changed. On the contrary, if plaintiff succeeds in suit, then it will helpful for executing the decree. Hence, I hold that application deserves to be allowed by imposing costs. Hence, I proceed to pass the following order.

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Order

1) Application is allowed subject to costs of Rs.500/- (Rupees five hundred only) paid to the plaintiff on today itself.

2) After compliance of above clause, plaintiff is permitted to carry out the necessary amendment in the plaint and file copy of amended plaint on or before next date.

3) Failure to comply above order on today itself, the application shall be deemed to be rejected.

Sd/-

(M. D. Thombare)

Civil Judge, Jr. Dn., Chandgad.

Dated:- 06/11/2017.

C E R T I F I C A T E

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	06/11/2017
Judgment/Order signed by the P. O. on	06/11/2017
Judgment/Order uploaded on	06/11/2017