

ORDER BELOW EXH. 78

With the consent of both parties after hearing at length this application posted today for order.

2. Plaintiffs have filed this application under Order VI Rule 17 of C.P. Code for amendment of plaint as prayed in the application. It is contention of plaintiff that, they have filed this suit for demarcation of boundaries. However, defendants filed their W.S. and opposed to suit. The defendant no. 1 and 2 have attempted to construct over suit property. Therefore, plaintiffs have filed application below Exh. 21 in consonance with Exh. 8 for temporary injunction. The defendant vide Exh. 37 & 45 filed pursis and giving undertaking / assurance that, they have not constructed over Block No. 867/3 and if at the end of trial it conclude that, they have encroached over plaintiffs property ready to withdrawn with their own cost.

3. Thereafter, plaintiffs have filed application at Exh. 41 for measurement of Block No. 867 and 1013 for pointing out encroachment over any area. These defendants vide their say at Exh. 46 strongly opposed to the application and denied any kind of obstruction to the passing way of plaintiffs. However, on 22.03.2022 decided to measure the above properties. Meanwhile, the defendant no. 1, 2, 3-A to 3-C by taking disadvantage of plaintiff's absence constructed teen shed over way of plaintiffs from the Block No. 867. The plaintiffs have demanded to remove ill-legally constructed teen shed to these defendants to which they have again give assurance of removal. However, on 22.03.2022

during measurement proceeding defendant no. 1 and 2 claim their possession from the back side of teen shed over Block No 867 to the extent of 0.11.74 H.R. and obstructed plaintiffs to approach towards their land in Block No. 867. Therefore, plaintiffs prayed to incorporate para no. A to D as prayed in the application. They further contended that, the above proposed amendment is required as per the commissioner report and subsequent events. The proposed amendment neither caused prejudice to defendants nor change the suit proceeding and claimed diligently after receiving commissioner report. Thus, prayed to allow their application.

4. Defendants have strongly opposed application by filing their say at Exh. 82. They contended that, plaintiffs having no concern with property in Block No. 1013. Plaintiffs filed this suit for fixation of boundaries of their property. They having no right to claim any other reliefs in it. The proposed amendment would be change the nature of proceeding. Through this application, plaintiffs are trying to add explanation of encroachment. Defendants have strongly opposed to the commissioner report. However, yet the report not proved. Therefore, this application is premature at the stage.

5. Defendants further contended that, by this amendment plaintiffs claim for removal of encroachment. The teen shed constructed by defendants over Block No. 1013 is old one and before filing suit. Since 2020 disputed teen shed over their property. The plaintiffs through this amendment trying to change the nature of proceeding and it would caused prejudice to them. Thus, prayed to reject the application.

6. Perused record. Heard counsels for both parties. They submitted in

verbatim of their application and say. It is not disputed that, during pendency of suit property of Block No. 867 and 1013 were measured as per the order of court. The plaintiffs filed this application and intent to incorporate pleading specified in para no. A to D of the application in respect of measurement report. Defendants not denied the measurement of above properties as per order of the court.

7. For deciding application for amendment of plaint, court ought to be decide the proposed amendment is just and proper for the decision of suit and filed within time or not. Plaintiffs after receiving commissioner report filed this application. The contention of plaintiffs mainly base on subsequent events of encroachment revel after measurement. Plaintiffs specifically contended that, defendants claim their possession over property bearing Block No. 867 and obstructed their approach way to their fields.

8. After considering the pleading, if this application allowed no prejudice would be caused to the defendants. The defendants contended that, plaintiffs have filed this suit for fixation of boundaries and therefore, they are not entitled for other reliefs. As per commissioner report, the defendants claimed their possession over property in Block No. 867. However, the claim of defendants came on record after commissioner report. This is one of the subsequent event. Therefore, I do not find any force in the submission of defendants that, plaintiffs having no right to claim other relief in present suit.

9. While deciding present application, court ought to consider that, proposed amendment is just for the final decision of suit or not. The plaintiffs claimed for fixation of boundaries marks of Block No. 867/2,

867/3 and 1013. The proposed amendment in respect of encroached portion is related with suit property bearing Block No. 867. Further, defendants failed to point out what kind of prejudice they would caused if this application allowed. If at this stage, this application rejected and after trial it proved that, there is an encroachment of defendants over Block No. 867. Then it will be difficult for fixation of boundary marks of suit properties.

10. Therefore, from above discussion I do not find that, proposed amendment would change the nature of proceeding. The proposed amendment is just for the final decision of case. If this application allowed, no prejudice would be caused to the defendants. The above application fulfill all necessary requirements. Hence, in result of above discussion I pass following order,

ORDER

1. Application is allowed and no order to cost.
2. Plaintiffs are permitted to carried out necessary amendment as prayed in the application within 14 days and filed copy of amended plaint and decree on record.
3. Defendants having liberty to file their amended written statement after compliance of order by plaintiff.
4. Parties to take note and comply order accordingly.

(R. P. Thore)

J.O.Code MH02897

Civil Judge, Junior Division,
Ajara.

Date: 28.08.2024.