

Order below Exh.42 in Reg. Civil Suit No.6/2008

By this application, plaintiffs have prayed for amendment of plaint under Order 6 Rule 17 of C.P.C..

2) As per the application, plaintiffs have filed this suit as the defendants are trying to cause obstruction and made encroachment in the suit property and after filing of the written statement by defendants, by way of the written statement, defendants have pleaded that they are in possession of 20 Gunthas land, however, they have not pleaded anything about the title over the said 20 R land. The said contention of the defendants regarding the possession over the 20 R land in Gat No.1633, is false. After filing of the written statement by defendants, plaintiffs had filed application for appointment of court commissioner, which came to be rejected. However, thereafter plaintiffs carried out measurement by filing application at Deputy Superintendent of Land Record office, Panhala, and as per said application of plaintiffs, measurement of the suit property was carried out on 03/07/2016. After filing of this suit, there was no injunction order, due to which, there are some roofs and construction in mud, in the southern corner of the land Gat No.1633. At the time of encroachment made by defendants, police cases were filed, however, defendants have made forcible encroachment over 3.50 R land, which came to be discovered on 24/2/2016, after the measurement and so plaintiffs, are willing to include pleadings in

respect of the said measurement and the said alleged 3.50 R encroachment by defendants in the suit property, as mentioned in this application and the valuation in accordance with the said proposed amendment. As per the application, due to the proposed amendment, nature of this suit is not going to be change and proposed amendment is necessary for the decision of this suit on merits and it will not cause any loss to the defendants.

3) Defendants have filed their say to this application vide Exh.43 and denied the contents in this application. As per say of the defendants, the contents in this application are false and not honest and the proposed amendment is out of limitation. Defendants have denied that they have made encroachment in the suit property after filing of the suit, however, defendants have mentioned in their say that the possession of the defendants over 20 R land as mentioned in the written statement, is since 32 to 35 years and they have got lawful rights in respect of the same, in suit property. So defendants have prayed for rejection of the application.

4) Heard both the sides and perused application and say. After going through the application, say and hearing both the sides, following points arise for determination and I am giving my findings thereon for the reasons stated therein:-

| <u>Sr.No.</u> | <u>Points</u> | <u>Findings</u> |
|---------------|---|---------------------|
| 1 | Whether the proposed amendment is necessary for decision of this suit on merits ? | In the affirmative. |

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|----|---|--------------------|
| 2. | Whether the proposed amendment is going to change the nature of this suit ? | In the negative. |
| 3. | What order ? | As per final order |

REASONS

AS TO POINT NOS.1 AND 2:-

5) Learned Advocate for the plaintiffs submitted that, defendants have made encroachment in the suit property and plaintiffs have carried out measurement by Deputy Superintendent of Land Record and map of the same, is filed on record along with list below Exh.45. He submitted that defendants have made encroachment during pendency of this suit and contents in respect of the said encroachment are necessary to mention in the plaint, in order to decide the matter on merits. He submitted that defendants have not pleaded anything about their title over the 20 R land in respect of which, defendants claims their possession in their written statement. So Ld. Advocate for the plaintiffs prayed for allowing the proposed amendment.

6) Per contra, Ld. Advocate for the defendants submitted that plaintiffs have filed this suit for simplicitor injunction and defendants have filed their written statement in the year 2008 and pleaded about their possession over 20 R land, so plaintiffs had became aware about the possession of defendants over 20 R land, as pleaded in the written statement since the year 2008, however, they kept mum and thereafter filed this application. He submitted

that possession of defendants over 20 R land, is long standing and defendants have not made any encroachment in the suit property during pendency of this suit. He submitted that the measurement carried out by plaintiffs, is false and possession of defendants over 20 R land is lawful. Ld. Advocate for defendants submitted that by this application, plaintiffs are trying to bring their claim within limitation and the proposed amendment is mala fide and time barred, so Ld. Advocate for defendants, have prayed for rejection of the application.

7) I have perused the pleadings of both the sides. Perusal of plaint shows that plaintiffs have filed this suit for perpetual injunction contending that defendants are causing obstruction to their possession by taking disadvantage of the entry of their names to the crops on the 7 x 12 extract, as per the order of Upper Zilladhikari, Kolhapur.

8) Defendants have filed their written statement vide Exh.18 and denied the contents in the plaint. Defendants have specifically pleaded that, defendants and their families are in possession of 20 R land towards southern side of suit property since many years and so this suit is not legal and defendants have constructed their residential houses, sheds, roofs and space for poultry business and they are in peaceful possession of the said property since 30 to 35 years.

9) In the light of above contrary pleadings of both the sides and the measurement map filed on record by plaintiffs vide list below Exh.45, it appears that the dispute between the parties is in respect of possession over the suit property and nature of said possession. The roots of the proposed amendment are in the measurement carried out by plaintiffs through Deputy Superintendent of Land Record office, Panhala on 24/2/2016 and fixation of boundaries on 03/07/2016. As per the defence of the defendants, they have not made any encroachment in the suit property during pendency of this suit, however, they are in possession of 20 R land in land Gat No.1633 in the southern corner and said possession of defendants, is long standing and lawful.

10) So considering the nature of dispute between the parties, it appears to my mind that, the proposed amendment, which is in respect of including the pleadings about the encroachment and the prayer in respect of removal of the said encroachment, is necessary to allow for the decision of the dispute between the parties in respect of the suit property, on merits. Further, the proposed amendment, if allowed, then it will be helpful for the decision of this suit on merits and it will not cause any loss to the defendants, however, if the proposed amendment is allowed, then it will avoid the multiplicity of the proceeding, which may arise in future, if the proposed amendment is rejected. Further, avoiding multiplicity of proceeding is one of the ground for allowing the amendment applications. So in the light of above

discussed entire facts and circumstances, it is clear that proposed amendment is necessary for the decision of the suit on merits and the roots of the said proposed amendment found place in the previous pleadings of the parties. So also, due to the proposed amendment, no new case, totally contrary to the previous pleadings of the parties, is going to introduce in the plaint.

11) Defendants have objected this application on the ground of limitation. Considering the said grievance of the defendants and the pleadings in the written statement regarding their possession over 20 R lands in the southern side portion in suit property, it will be proper to keep the issue of limitation open for the adjudication, by giving opportunities to both the sides. So the effect of proposed amendment and the prayer of the plaintiffs regarding removal of encroachment of 3.50 R as mentioned in this application, shall be treated from the date of filing of this application and not from the date of filing of this suit.

12) The another objection of the defendants regarding the delay is that plaintiffs were aware about the possession of defendants over the 20 R in the suit property, however, intentionally plaintiffs have filed simplicitor suit for injunction and thereafter filed this application for including the prayer regarding removal of encroachment.

13) In this suit, it is clear that defendants filed their written statement on 07/04/2008 vide Exh. 18 and placed on record their claim regarding their possession over 20 R in suit property.

However, in spite of the knowledge of the said pleadings, plaintiffs have filed this application on 09/08/2016. So, considering the said period of delay, plaintiffs are liable for the costs payable to defendants. Considering the above mentioned facts and circumstances and nature of the proposed amendment, I answer point No.1 in the affirmative and point No.2 in the negative.

AS TO POINT NO.3:

14) As I have already answered point No.1 in the affirmative and point no.2 in the negative, so in order to answer point no.3, I proceed to pass the following order:-

O R D E R

- 1) Application is allowed subject to the costs of Rs.600/-, payable to defendants.
- 2) Plaintiffs to carry out necessary amendment in the plaint within 14 days and file on record copy of the amended plaint, without fail.
- 3) Effect of this amendment and the prayer in respect of removal of encroachment, as mentioned in this application shall be considered from the date of filing of this application i.e. from 09/08/2016 and not from the date of filing of this suit.

Place:-Panhala.
Date:-27/09/2016

Sd/-
(V.A.Awaghade)
Jt. Civil Judge Junior Division,
Panhala.

-: CERTIFICATE :-

I affirm that the contents of the P.D.F. file order are same,
word to word, as per the original Order.

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| Name of the Stenographer | Shri. A.A.Patil |
| Name of Court | Shri. V.A.Awaghade |
| Date of Dictation | 27/09/2016 |
| Order signed by the P.O. on | 05/10/2016 |
| Order uploaded on | 05/10/2016 |