

ORDER BELOW EXH.No. 30

01] By this application, plaintiffs have prayed for amendment of the plaint.

02] As per the application, plaintiffs have filed this suit for partition and perpetual injunction and suit property is adjacent to village Darewadi and there were clashes on account of boundary of the said suit property and as the holder of land Gat No.344 made complaints, so plaintiffs have filed this suit for partition of the property as per the sale deed, and for perpetual injunction.

03] It is the contention of the plaintiffs that plaintiffs had filed application for measurement of the suit property to Deputy Superintendent of Land Record office, Panhala and as per the said application, Surveyor Shri. S.A.Kadam of said office, has carried out measurement on 13/03/2016 and during the said measurement, it has been shown that the co-sharer Shankar Pandu Shinde has made encroachment of 6 Guntha and 2 Guntha in the suit property out of land Gat No.347 and 348. So also, Babu Hari Mole, who is share holder in Gat No.375, has also made 8 Guntha encroachment in the suit property and defendant no.3 Khandu Dnyandu Shinde has made encroachment in the 6 Guntha land in the suit property from Gat No.344 and so plaintiff is willing to include the said contents regarding the measurement No.3480, dt. 13/10/2015 and thereby to include prayer in prayer column 9 (b) the prayer in respect of removal of the said 6 Guntha

encroachment and possession thereto. As per the application, due to the proposed amendment, there is no change in the nature of this suit, however, the proposed amendment is necessary for the decision of this suit and to avoid the multiplicity of the proceedings, so plaintiffs have prayed for the proposed amendment.

04] Defendant nos.3, 4, 6 and 8 have filed their say to this application vide Exh.31 and opposed the application. As per the say of these defendants, the proposed amendment is illegal and not specific, so also, it is going to change the nature of this suit and plaintiffs have not paid proper court fees and not made proper valuation. Plaintiffs have never carried out measurement and the measurement map filed on record, is false and so defendant nos.3,4,6 and 8 have prayed for rejection of the application. Rest of defendants have not filed their say, in spite of opportunity given to them.

05] Heard both the sides and perused the record. After going through the application, say and hearing of both the sides, following points arises for determination and I am giving my findings 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.
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:-

06] Ld. Advocate for the plaintiffs submitted that the proposed amendment is necessary for the decision of this suit on merits and in the plaint itself, plaintiffs have pleaded regarding the encroachment by defendants and the measurement. So by way of this application, plaintiffs are not changing the nature of the suit. So learned Advocate for plaintiffs have prayed for allowing the proposed amendment.

07] Per contra, Ld. Advocate for defendant nos. 3, 4, 6 and 8, submitted that proposed amendment is not necessary and it is going to change the nature of this suit and due to the said proposed amendment, valuation of the suit will change. So Ld. Advocate for defendants, have prayed for rejection of the application.

08] In this suit, perusal of plaint shows that plaintiff have filed this suit for partition, mandatory and perpetual injunction and in the plaint itself plaintiff has specifically pleaded that towards eastern side of suit property, there is land Gat No.344 of the defendant nos. 3 to 12 and they are making complaints about the boundary of the suit property. So also, it is specifically mentioned in the plaint that defendants are trying to make encroachment and

so plaintiffs filed application to Deputy Superintend of Land Record office, Panhala for measurement of suit property and the measurement was not carried out till filing of the suit. However, defendants are trying to make encroachment from the eastern and southern side and thereby they are trying to make construction thereto. Defendant nos.1 to 12 have filed their written statement vide Exh.19 and denied the claim of plaintiffs.

09] In the light of above pleadings of plaintiffs in the plaint in respect of the alleged encroachment and the measurement and the pleadings in this application that the said measurement has been carried out on 13/3/2016 i.e. during the pendency of this suit and after filing of this suit, it cannot be said that the proposed amendment is contrary to the previous pleadings of the plaintiffs in the plaint. Moreover, the proposed amendment, which is in respect of the removal of encroachment based upon the measurement carried out during pendency of suit, found it's roots in the plaint.

10] So considering the pleadings of both the sides, the nature of dispute between the parties and for the decision of the dispute between the parties on merits, the proposed amendment is necessary. Further, even though, the proposed amendment is allowed, then also the nature of this suit will not change and even after the proposed amendment this suit will be in between plaintiff and defendants and proposed amendment will not introduce any new pleadings, which is totally contrary to the previous pleadings

of the plaintiffs. Further, if the proposed amendment is allowed, then it will be helpful for the decision of this suit on merits and it will avoid the multiplicity of the proceeding in between the parties, which may arise in future. Avoiding multiplicity of the proceeding is also one of the reason to allow the amendment applications. So considering the above mentioned entire facts and circumstances of this suit and the nature of the proposed amendment, roots of which are already there in the plaint, I hold that proposed amendment is necessary for the decision of the suit on merits and it is not changing the nature of this suit. So, I answer point No.1 in the affirmative and point No.2 in the negative.

AS TO POINT NO.3:

11] 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:-

ORDER

- 1) Application is allowed subject to the costs of Rs.300/- payable to defendant nos.3,4,6 & 8.
- 2) Plaintiffs to carry out necessary amendment in the plaint within 14 days and file on record copy of the amended plaint, without fail.

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.

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