



Order below Exh. 26 in R.C.S. No. 27/2021

This is an application made by the plaintiffs under Order VI Rule 17 of the Code of Civil Procedure contending that the suit is instituted for relief of injunction. Trial of the suit is not commenced yet. As partition of suit the property is not effected between the parties, the construction made by the defendant is illegal and against provisions of law. Therefore, the plaintiffs constrained to amend their pleadings relating to illegal construction of the defendant which deprives right of the plaintiffs. Likewise, mandatory injunction need to be sought for demolition of construction. The plaintiffs came with case that no partition is effected between the defendant and themselves. Therefore, if pleadings as sought inserted, nature of suit would not be changed. The plaintiffs are not creating new case. If proposed amendment is allowed, it will be helpful for the Court in dispensing proper justice. On these grounds, the plaintiffs solicited permission to make necessary amendment in their pleadings.

02. The defendant filed his say at Exh.28 and resisted contention of the plaintiffs. He specifically averred that the plaintiffs have no right to infringe his ancestral rights. The defendant is co-sharer in the suit property. The suit property is ancestral property and being manager of family, name of only plaintiff No.1 is entered to 7/12 extract. In such circumstances, natural right of the defendant cannot be deprived. The area is ancestral on which the defendant has erected the house. After death of father, the mother has effected equal partition of the suit property and accordingly, the defendant is having occupancy

over 1/4 share in the suit property since many years. Before constructing house by the defendant in the suit property, measurement was carried out in presence of the plaintiffs and villagers and thereafter the defendant has completed his construction. If proposed amendment is allowed, peaceful enjoyment of the defendant would be disturbed.

03. After death of father, names of his all legal heirs not entered to the suit property but only name of the plaintiff is entered to 7/12 extract being elder brother. Accordingly, correction proceeding is started before the Dy.Supt. Land Record, Panhala. The application of temporary injunction is decided by the Court. Hence, amendment relating to said aspect cannot be sought by the plaintiffs. The defendant is in possession of 1250 sq.feet area out of suit block No.749 and he constructed house thereon. The plaintiffs are enjoying remaining area except the constructed portion and other agricultural and house properties. The plaintiff and other co-sharers have constructed their houses without obtaining consent of the defendant. Even, no cause of action arose to institute the suit.

04. In the suit, it is pleaded that the defendant caused obstruction to the plaintiffs while enjoying the suit property but vide present application, they sought mandatory injunction for demolition of house construction. Therefore, said amendment cannot be allowed. The proposed amendment would change nature of the suit. By way of proposed amendment, the plaintiffs are trying to cause irreparable injury to the property of the defendant. Already, application of temporary injunction is decided by the Court. Hence, the plaintiffs cannot seek relief of mandatory injunction again. The said amendment would be adversely affected on defence of the defendant. Ultimately, the defendant prayed to reject the application.

05. From the contentions as above, following points arise for my consideration. I have recorded my finding to each point for the reasons to follow:

Sr.No.	Points	Findings
1.	Whether proposed amendment is necessary for the purpose of determining the real question in controversy between the parties ?	Yes.
2.	What order?	As per final order.

REASONS

As to points No. 1 and 2 :

06. Heard both the learned advocates for respective parties. It is asserted by the plaintiffs that in order to deprive their rights, the defendant has constructed house in the suit property without effecting partition. Hence, the plaintiffs sought to insert prayer of mandatory injunction in the suit and other consequential amendment to that effect in their pleadings. On the other hand, it is averred by the defendant that partition of the suit property is already effected and he is having long standing possession over his 1/4 area in the suit property.

07. In context to proposed amendment, on perusal of plaint it transpires that the plaintiffs have already pleaded that without effecting partition by metes and bounds, the defendant started construction of house in the suit property. They also made prayer of demolishing near about 8 feet constructed portion of house if it is found in their area. Now, through present application, the plaintiffs sought amendment that the construction made by the defendant is illegal and against provisions of law and they also sought insertion of prayer of mandatory injunction for demolishing construction. Thus,

considering proposed amendment, the plaintiffs are not creating new case but said aspect is already pleaded in their plaint and now they want to make certain additions in previous pleadings.

08. It appears that the plaintiffs would not intending to take different plea to that of previous. After all it is for the plaintiffs to prove their case. As per settled principle of law, while considering amendment application, merits of the case need not be looked into. In present suit, on considering pleadings in plaint, the proposed amendment does not appear inconsistent with previous case of the plaintiffs.

09. Thus, looking to the contentions in application for amendment in the light of averment in the plaint, it is seen that the amendment sought is bonafide and will not change nature of the claim. Also no prejudice would be caused to the defendant if proposed amendment is allowed as he has an opportunity to file additional written statement on amendment. Considering the nature of suit i.e. injunction, it deems necessary to allow the plaintiffs to amend their pleadings. This Court is satisfied that proposed amendment is necessary for the purpose of determining the real question in controversy between the parties and to avoid multiplicity of the proceedings. Hence, point No.1 is answered in the affirmative and to answer point No. 2, I proceed to pass following order.

ORDER

1. Application is allowed subject to costs of Rs. 200/- payable to the defendant.

2. The plaintiffs to carry out necessary amendment in the plaint as enumerated in present application within 14 days from this order.
3. The plaintiffs to deposit necessary court fees and supply sufficient copies of the plaint after carrying out amendment as above.

Date : 24/03/2022.

(V.V.Khulape)
Civil Judge Junior Division,
Kale-Kheriwade.