



Order below Exh. 18 in R.C.S. No. 63/2020

This is an application made by the plaintiff under order VI Rule 17 of the Code of Civil Procedure contending that the suit is instituted for removal encroachment. In the plaint para No.1 (B), eastern side boundary of C.T.S.No.353 is mentioned as 152 instead of C.T.S. No.352. Likewise, in the same suit, application for measurement of C.T.S.No. 352, 354 and 355 is made separately. In the said application also, eastern side boundary of C.T.S.No.353 is mentioned as 152 instead of C.T.S.No.352. Thus, the said mistake is inadvertent and typographical. According to plaintiff the said amendment is of technical in nature and nature of suit will not be changed if it is allowed. The defendants would not put any loss if proposed amendment is allowed. Ultimately, the plaintiff prayed to allow them to amend eastern side boundary of C.T.S.No.353 as C.T.S.No.352 instead of 152 in the plaint and application of appointment of court commissioner (Exh.5).

02. The defendants filed their say on overleaf of application and contended that the plaintiff has filed application of amendment after plea taken by the defendants in application made under Order VII Rule 11 of CPC. The plaintiff has no right to change the boundary afterthought. There is no believable reason mentioned in application. It is prayed by the defendants that

considering nature of suit, stage and present application is made after plea taken by the defendants, it is liable to be rejected with costs.

03. 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 :

04. Heard both the learned advocates for respective parties. It is asserted and argued by the plaintiff that inadvertently, in the plaint para No.1 (B), and application for appointment of court commissioner, eastern side boundary of C.T.S.No.353 is mentioned as 152 instead of C.T.S. No.352. Thus, the said mistake is inadvertent and typographical. Therefore, he prayed for amendment in plaint and application for appointment in court commissioner. On the other hand the defendants strongly objected for proposed amendment as it is made after plea taken by them in application under Order VII Rule 11 of CPC.

05. In context to proposed amendment, on perusal of map relating to C.T.S.No .353, 354 and 355 filed by the plaintiff along with list at Exh.4, it appears that at eastern side of C.T.S.No.353, C.T.S.No.352 is situated and not C.T.S.No.152. Thus, it appears that inadvertently and due to typographical mistake, the plaintiff mentioned C.T.S.No.152 at eastern side of C.T.S.No.353 instead of C.T.S.No.352, in his plaint and application for appointment court commissioner. As such, proposed amendment being technical in nature, it deems just and proper to allow the plaintiff to make necessary amendment in his pleadings.

06. 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 defendants if proposed amendment is allowed as they have an opportunity to file additional written statement on amendment. Considering the nature of suit i.e. removal of encroachment, declaration and injunction, it deems necessary to allow the plaintiff to amend his 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. 100/- payable to the defendants.
2. The plaintiff to carry out necessary amendment in the plaint and application of appointment of court commissioner (Exh.5) as enumerated in present application within 14 days from this order.
3. The plaintiff to supply sufficient copies of the plaint after carrying out amendment as above.

Date : 14/03/2022.

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