

**Order below Exh.36 in R.C.S. No.430 Of 2020**(Passed on this 08th day of July, 2024)**Shamkant Vs. Unmesh & Ors**

CNR.NO.MHLA060016642020

The plaintiff has filed the present application for amendment in the plaint under Order VI Rule 17 of Civil Procedure Code (for short 'the C.P.C.').

02. The plaintiff submitted that, the defendants did not keep any common Dhura in between the land of plaintiffs and defendants by breaking Bandh. So, it is necessary in the interest of justice to measure the disputed land, make common Band and fix boundaries by appointing Court Commissioner. Due to this, the dispute between the parties will settle. Therefore, he sought permission to amend and add prayer clause (1/a) as under –

“१/अ) हे की, वादीचा दावा जमिन त्यांच्या ७/१२ क्षेत्राप्रमाणे व कब्जाप्रमाणे मोजुन खुना कायम करुन देण्याचा भुमापक, उपअधिक्षक भुमी अभिलेख, अहमदपूर यांना आदेश पारीत करण्यात यावा.”

However, the proposed amendment will neither change the nature of the suit nor cause injustice on anyone. Therefore, he prayed to allow the application.

03. The defendants No.1 to 3 resisted the application by filing say on the overleaf of the application. They contended that, the contents of the present application is false, hence denied. The plaintiff has filed the present application only to prolong the suit and to harass defendants. On the basis of the proposed amendment, the plaintiff is trying to clear the scrutiny. If the present application is allowed, the nature of suit will change and also it will cause irreparable loss to defendants which cannot be compensated in terms of money. The present suit is false and

illegal and filed only to grab defendants' land. Further, it appears that, the plaintiff has filed the present application only to measure his land. Therefore, they prayed to reject the application with heavy cost.

04. In spite of sufficient opportunities given to defendants No.4 to 6, they failed to file their say on the present application. Hence, the present application proceeded without their say.

05. Following points arise for my determination to which I have recorded my findings with reasons as follows :-

SR. NO	POINTS FOR DETERMINATION	FINDINGS
1.	Whether the amendment sought in the plaint is necessary for the purpose of determining the real question in controversy between the parties?	YES
2.	What order ?	The application is allowed.

06. Heard Ld Advocate Shri T.N. Kamble for the plaintiff and Ld Advocate Shri D.L. Ghogare for the defendants No.1 to 3. Ld Advocate on behalf of the plaintiff argued that, the main dispute is regarding common Bandh. There is no dispute as to area. The amendment sought is only in prayer clause. There will be no change in the nature of suit. Hence, he prayed to allow the application.

07. On the other side, Ld Advocate on behalf of the defendants No.1 to 3 argued that, there is nowhere pleading about the encroachment in plaint. The plaint is silent on this point. To this, Ld Advocate for the plaintiff invited the attention

of the Court towards Para No.4 of the plaint. Further, Ld Advocate for the defendants No.1 to 3 invited the attention of the Court towards prayer clause of Exh.01 and argued that, the plaintiff sought declaration of ownership and possession. The burden of proof of ownership and possession is on plaintiff. Rough sketch map is filed by plaintiff showing the land of plaintiff. Further, he argued that, the application filed by plaintiff for appointment of Court Commissioner is not pressed by him. If application is allowed, the nature of suit will change. There is no dispute as to encroachment. Hence, he prayed to reject the application.

REASONS

AS TO POINT NO.1 :

08. Perused the application, say of defendants No.1 to 3 and record of the suit. On perusal, it appears that the suit is for perpetual injunction and declaration of ownership. The suit was pending for argument on application for appointment of Court Commissioner (Exh.5). Meanwhile, the plaintiff has filed the present application for the proposed amendment.

09. It is worth mentioning here that, Order VI provides that Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such a manner and on such terms as may be just and proper, for the purpose of determining the real question of controversy between the parties. Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

10. The purpose and object of Order VI rule 17 of C.P.C. is to allow either party to alter or amend his pleadings in such

manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various precedents. It is settled law that, the amendment cannot be claimed as a matter of right and under all circumstance. But it is equally true that the Courts while deciding such prayers should not adopt a hyper technical approach. Liberal approach should be the general rule. Technicalities of law should not be permitted to hamper the Courts in the administration of justice between the parties. Amendment is allowed in the pleadings to avoid uncalled for multiplicity of litigation. Also, it is well settled by various decision of the Hon'ble Supreme Court as well as Hon'ble High Courts that the Court should be liberal in granting the prayer for amendment of pleading unless serious injustice or irreparable loss is caused to the other side or on the ground that the prayer for amendment was not a bonafide one.

11. On perusal of record, it seems that the plaintiff wants to amend the plaint by adding prayer clause (1/a) as mentioned above by including the relief for measurement of disputed land, make common Band and for fixation of boundaries by appointing Court Commissioner. Obviously, the plaintiff will have to prove facts of the proposed amendment, if at all they form part of the pleadings. As already mentioned, the suit is for perpetual injunction and declaration of ownership. Issues are not framed in the present suit. The trial is yet to begin. If the proposed amendment is permitted, it will not change the nature of suit. But, if the proposed amendment is not allowed, the plaintiff will lose an opportunity to plead such facts and prove the same against defendants. No prejudice would be caused to the

defendants by adding the relief as mentioned above. Also, the liberty can be given to defendant to file his additional written statement in defence. As such, the amendment sought for is necessary for the purpose of determining the real question in controversy between the parties. Therefore, to meet the ends of justice and to avoid multiplicity of the litigation, it would be just and proper to allow the application in the interest of justice. Therefore, I answer **Point No.1 in the affirmative.**

AS TO POINT NO.2 :-

12. In view of my finding as to Point No.1, the application deserves to be allowed. As far as imposition of cost is concerned, the plaintiff has moved this application at earliest. In such circumstances, it would not be just and proper to impose cost on the plaintiff. Hence, I proceed to pass the following order.

O R D E R

- 1) The application (**Exh.36**) is allowed.
- 2) The plaintiff shall carry out the proposed amendment accordingly within 14 days from today and supply amended copies of the plaint to defendants within one week thereafter.
- 3) Failure of the plaintiff to carry out amendment and to supply the copies in stipulated time, would result into automatic vacation of the order without further reference to the Court.

(Dictated and pronounced in open Court)

Place : Ahmedpur.
Date : 08.07.2024.

Sd/-
(K.B. Gadiwale)
Jt. Civil Judge, Jr. Division,
(Court No.04), Ahmedpur,
Dist.Latur.