

ORDER BELOW EXH. 92

(Passed on : 14.06.2017)

01. Read application and say. Heard Mr. Walande, advocate for the plaintiff and Mr. Dhumal, advocate for the defendants. Perused the record.

02. Present application is filed by the plaintiff for permission to amend the plaint under Order VI Rule 17 of Civil Procedure Code.

03. It is the case of the plaintiff that he has filed present suit for injunction wherein he has preferred present application. According to the plaintiff, during pendency of the suit he has carried out measurement of the suit property. During the course of measurement it was transpired that the defendant has committed encroachment over the suit property to the extent of 6 R land. Therefore, the plaintiff is entitled to recover it from the defendants. Therefore, the proposed amendment is necessary. He has further contended that it would not cause prejudice to the defendant as well as there would be no change in the nature of the suit.

04. On the contrary, it is the case of the defendants that because of proposed amendment there would be change in the nature of suit. Similarly, it would cause prejudice to the rights of the defendants. The plaintiff has already amended the suit, even the plaintiff has filed the present application. The plaintiff is intending to prolong the matter. Therefore, the defendants have prayed for

rejection of the application.

05. Having heard advocate for both sides and considering the rival contention of both parties, following points arise for my determination. I have recorded my findings thereon with reasons as under.

POINTS

FINDINGS

- | | | |
|---|-----|--------------------------------|
| 1. Whether the plaintiff has made out the case for proposed amendment ? | ... | <u>Yes.</u> |
| 2. What order ? | ... | <u>Application is allowed.</u> |

REASONS.

As to point No. 1 :-

06. Mr. Walande, advocate for the plaintiff has submitted that during the pendency of the suit the plaintiff has got measured the suit land wherein it was transpired that the defendant has committed encroachment over the suit property to the extent of 6 R land. Under the circumstances, the plaintiff is entitled to recover its possession from the defendant. Therefore, the proposed amendment is necessary.

07. Mr. Dhumal, advocate for the defendants has submitted that the plaintiff is going to prolong the matter at any cost. It is posted for hearing. Even the plaintiffs have filed the present application. He has further submitted that the plaintiffs have filed

false application. The defendant has not committed encroachment as per the case of the plaintiffs. Therefore, no question arise to amend the proposed amendment. Mr. Dhumal has further submitted that because of proposed amendment there would be change in the nature of suit. Similarly, it would cause prejudice to the defendants. Therefore, he has prayed for rejection of the application.

08. Having considered the submissions of both sides, reasons stated in application the court finds that facts of the proposed amendment is found subsequent event. Therefore, it is necessary to seek proposed amendment by the plaintiffs. It also finds that it would not change the nature of suit. Similarly, no prejudice would be caused to the defendants. It is on the plaintiff to prove its case as per the proposed amendment. Therefore, it would not hammer on the rights of the defendants. Thus, proposed amendment is found just and proper. Therefore, application filed by the plaintiff deserves to be allowed. Thus, the court answers the point in affirmative and proceed to pass the following order.

ORDER

1. The application is allowed.
2. The plaintiff to do the needful within stipulated time.

Nilanga.
Dated : 14.06.2017.

Sd/-
(G.H. Patil)
Civil Judge Senior Division,
Nilanga.