



**ORDER BELOW EXH. 29**

01) Perused the application submitted by the plaintiff for amendment in the plaint as per provisions of O-VI R-17 of the Code of Civil Procedure.

02) It is submitted that the plaintiff has filed the present suit for perpetual injunction. It is stated that the plaintiff has filed an application for appointment of court commissioner to measure the suit land Gat No. 96 admeasuring 56 R. situated at Hisamabad (Ujed) Tq. Shirur Anantpal. The said application was allowed and the court commissioner measured the suit property and it was found that the defendants No. 1 & 2 have encroached on 24 R Land from eastern and southern side while defendant No. 3 & 4 encroached on 7 R land from northern side. The plaintiff desire to recover possession of encroached land from the defendants No. 1 to 4. In that regard the plaintiff wants to make amendment in plaint para No. 2 by adding the contention in respect of the alleged encroachment as mentioned in para no. 3 of this application. The plaintiff further desires to add para no. 7/A after para 7 for recovery of possession of encroached land. The plaintiff also desire to amend prayer clause by adding para A/1 in the prayer clause as mentioned in the application.

03) The defendants strongly opposed the application. Heard both sides. It is well settled that the proviso to O-VI R-17 of the Code of Civil Procedure virtually prevents an application for the



amendment of pleadings from being 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 the trial. It appears that, the plaintiff sought amendment in the plaint on the basis of measurement carried out by the court commissioner on the strength of order of this court. It is the case of plaintiff that some portion of the suit property is encroached by the defendant No. 1 to 4. The said encroachment has come to the notice of plaintiff after filing of the suit and after the measurement carried out by court commissioner. So, the proposed amendment needs to be allowed for the just decision of the case. If, the proposed amendment is allowed then no prejudice would be caused to the defendants. The defendants would have opportunity of rebuttal. Hence, following order is passed to meet ends of justice.

**ORDER**

- a) Application for amendment as sought is allowed.
- b) Plaintiff to carry out the amendment within fourteen days.

**Place : Nilanga.  
Date : 25/11/2022.**

**(Anand S. Munde)  
Jt. Civil Judge, S.D., Nilanga.**