

MHLA120019622015 	RCS NO. 426/2015 Vimalbai Vs. Executive Engineer
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ORDER BELOW EXH.50

1] This application is moved by the plaintiff under Order VI Rule 17 of Civil Procedure Code. Thereby praying that he may be permitted to amend the plaint by deleting para no.6, 6 and 7 and adding para no. 6 to 8 stating that the defendants had encroached area admeasuring 8R land in Sy/Gat no. 389, area admeasuring 2R land in Sy/Gat no. 392 and area admeasuring 4R land in Sy/Gat no. 395.

2] The plaintiff contends that initially suit was filed for recovery of possession of encroached portion i.e. area admeasuring 20R land in Sy/Gat no. 395. During the pendency of the suit on 27/9/2018 application was moved for joint measurement of Sy/Gat nos.389, 392 & 395 by the plaintiff. Accordingly, T.I.L.R filed his report on 25/4/2019. However, it was revealed from the report of T.I.L.R that defendants have encroached upon total area admeasuring 14R in Sy/Gat nos.389, 392 and 395. It is stated that the defendant had encroached on the land more than the land acquired by the Government for sake of defendants. Hence, the proposed amendment is necessary. It is submitted that the proposed amendment will not change the nature of the suit and also will not cause prejudice to defendants. Therefore, the plaintiff in order, to avoid the multiplicity of the suit has prayed to allow the application.

3] Per contra the defendants resisted this application by filing say at Exh.55, on the ground that the proposed amendment would change nature of the suit as the plaintiff is trying to introduce the whole new case by way of this proposed amendment. The defendants submitted that report of T.I.L.R has infirmities and is not explicit one. Hence, the application is devoid of merits therefore prayed to reject the application.

4] In backdrop of the contentions of the both sides, it is clear that the suit is filed for recovery of possession of encroached portion in Sy/Gat no. 395 and the proposed amendment which the plaintiff has sought is for possession of encroached portion in Sy/Gat no.389, 392 and 395. Perusal of record reveals that after the submission of report of T.I.L.R on 25/4/2019, the plaintiff learnt that defendants have not only encroached in Sy/Gat no. 395 but also in Sy/Gat no. 389 and 392 to the extent of 12R.

5] The main objection raised by defendants is that this amendment by the proposed amendment the plaintiff is trying to introduce whole new case which in turn will change nature of the suit. It is pertinent to note that the proposed amendment does not change nature of the suit as the plaintiff desires to seek possession of the encroached portion in Sy/Gat no. 395 as well as in Sy/Gat nos. 389 and 392. Ultimately the nature of relief sought by the plaintiff remains the same. Therefore, in order to avoid multiplicity of litigations, the proposed amendment is necessary. As the trial is not yet commenced it will not cause any prejudice to defendants. Hence, in the interest of justice I pass following order:-

ORDER

- 1) Application at Exh.50 is allowed.
- 2) The plaintiff is directed to carry out the above said amendment within 14 days from the date of this order.
- 3) The plaintiff shall file copies of amended plaint immediately after carrying out the amendments.

Date: 12/06/2023

(R. D. Kharate)
Jt. Civil Judge J. D., Nilanga