

COMMON ORDER BELOW EXH. 29 IN R.C.S. No. 23/2016
(Shivraji Vs. Amol & others.)

1. The present application is filed by the plaintiff under the provision of O 6 R. 17 of the Code of Civil Procedure.

2. By filing present application it is submitted that the plaintiff while filing the present suit inadvertently did not claim the relief of possession of encroached area and mesne profit. He simply filed suit for perpetual injunction. Thereafter the plaintiff filed application for joint measurement of suit property as well as the land of defendant no. 2. Accordingly TILR, Renapur was appointed as a Court Commissioner for joint measurement of lands. The TILR has filed its report, which shows that the defendant no. 2 has encroached over 17 R land out of suit property from western side. Therefore, now it is necessary to amend the plaint for the relief of recovery of possession of encroached area as well as mesne profit. It is further submitted that the amendment will not change the nature of the suit as well as it will help to arrive proper adjudication of the suit. Therefore, application may be allowed.

3. The ld. advocate for defendant no. 2 filed his say and submitted that the defendant no. 2 has filed his written statement. Now the plaintiff has no right to file the present application. This is not the proper stage to file the present application. The application is filed only to delay the proceeding. Therefore, application may be rejected.

4. Heard the both sides. After perusal of the record it is seen that the present suit is filed by the plaintiff for perpetual injunction, wherein the record shows that the plaintiff filed application for measurement of suit property as well as the landed property of defendant no. 2, which is at Exh. 19. My ld. predecessor had allowed the said application and accordingly the TILR, Renapur carried out joint measurement and filed its report alongwith map at Exh. 23. After

perusal of said report and map it is seen that the defendant no. 2 has encroached over the suit property to the extent of 17 R from western side. Therefore, it is necessary to give an opportunity to the plaintiff to seek relief regarding recovery of encroached portion as well as mesne profit in order to avoid multiplicity of the proceeding by way of amendment in the plaint.

5. The ld. advocate for defendant no. 2 has took objection stating that the present application is not tenable because it is filed at belated stage. The defendant no. 2 has already filed his written statement. But, the record shows that the fact of encroachment is came on record after the joint measurement report. If an opportunity is given to the plaintiff to amend the plaint it will not cause any hardship to the defendant no. 2 or any of the defendants because they will get an opportunity to file their written statement on amended plaint as well as they are at liberty to cross examine the plaintiff as well as his witnesses including TILR.

6. While permitting the plaintiff to amend the plaint, it is necessary that the plaintiff has prayed for the relief of recovery of possession of encroached area. Therefore, it is necessary to direct the plaintiff to deposit necessary Court Fees for the said relief. Hence, I pass the following order.

ORDER

1. The application is allowed.
2. The plaintiff is directed to carry out necessary amendment till next date and to furnish amended copy of plaint.
3. The plaintiff is directed to deposit necessary Court Fees regarding the relief of recovery of possession.
4. No order as to cost.

Dated 17/07/2019

**(O. M. Mali)
Civil Judge J.D. Renapur.**