

RCS No.114 of 2019
CNR NO. MHLA130006522019
Madhukar Vs. Sharad

ORDER BELOW EXH.21
(Dt. 22-02-2023)

1. The plaintiff has filed this application under Order 6 Rule 17 of the Civil Procedure Code.
2. Perused application. It is supported by an affidavit of the plaintiff. defendant objected the application by filing say overleaf the application. Heard, both the sides.
3. it is the contention of the plaintiff that in the plaint paragraph No.1 boundaries of the suit property are given. However, while typing the plaint, by mistake, instead of name of Ram Yeshwanta Rautrao, name of Janardhan Kishan Rautrao is typed. In fact, the land situated towards the Northern side of the suit land belongs to Ram Yeshwant Rautrao. Hence, in order to bring on record, correct position, plaint needs to be amended. It is further contended that in case the plaint is amended no prejudice will be caused to the defendant. Hence, prayed to allow the application.
4. Defendant objected the application. It is the main contention of the defendant that the present application is filed after the evidence affidavit of the plaintiff is filed on record. It is belated. Proposed amendment will change the nature of the suit and will result into prejudice to the defendant. Application is devoid of merits, hence liable to be rejected.
5. Considering rival contentions of the parties, following points arise for my consideration. I have recorded my findings against them for the reasons given below.

Points for determination

Sr.	Points	Findings
1.	Whether applicant / plaintiff is entitled to carry out proposed amendment?	... Yes.
2.	What order?	... Application allowed.

REASONS

Point Nos.1 and 2

6. In plaint paragraph No.1 plaintiff has given boundaries of the suit property. Towards Northern side it is shown that there is land belonging to one Janardhan Kisan Rautrao. By this application, now the plaintiff intends to amend it. It is contended that actually there is land of Ram Yeshwantrao Rautrao towards Northern side of the suit property. The defendant has filed the written statement (Exh.16) and contested the suit. The defendant has

taken objection to the correctness of the four boundaries of the suit property.

7. It is important to note here that the plaintiff has filed this suit for recovery of possession along with mesne profits. It is the contention of the plaintiff (in plaint) that suit land was sold to the defendant. The area in actual possession was in excess to the area actually recorded in revenue records. Therefore, at the time of execution of sale deed, it was agreed that after correction of entries, the defendant shall reconvey the excess land to the plaintiff. Correction is made and now by this suit the plaintiff is claiming relief of reconveyance of the said excess land. The defendant has admitted the fact of execution of sale deed. As such, it is clear that the plaintiff is the vendor of the defendant. The sale deed executed by the plaintiff is the basis of title of the defendant over the suit land. As such, in the given facts and circumstances of the case at hand, alteration / amendment of the boundary of the suit land will have no adverse effect on the claim or defence. It is true that the issues are framed and the suit is posted for evidence of the plaintiff. The proposed amendment is sought at a belated stage. However, considering nature of the suit, it is clear that the proposed amendment is necessary for the purpose of ascertaining the property in dispute and determining real question in controversy. Delay caused may be compensated by imposing cost on the plaintiff. Hence, point No.1 is answered in the affirmative.

8. As discussed above, point No.1 is answered in the affirmative, for the reasons discussed above. Keeping in mind the same reasons, in answer to point No.2 following order is passed.

ORDER

- (1) Application allowed subject to cost of Rs.300/- to be paid by the plaintiff to the defendant.
- (2) The plaintiff shall carry out proposed amendment on or before next fixed date.

(Declared and pronounced in open Court)

Date.22-02-2023

Sd/-
(Ramakant B. Hanwate)
Civil Judge, Junior Division, Renapur.