

RCS No.145/2017
CNR NO.
MHLA130006932017
Gangaram Vs. Patloba+2

ORDER BELOW EXH.22
(Dt. 10-12-2021)

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. Defendants objected the application by filing their say at Exh.25. Heard, Shri. M. G. Sirsat, learned advocate for the applicant and Shri. W. H. Bhise, learned advocate for the defendants.
3. It is the case of the plaintiff that he is the owner in possession of suit land. Defendants are the adjacent land owners and they have encroached upon the suit land therefore, the plaintiff has added them as party to the suit. It is pleaded by the plaintiff that defendants are adjacent land owners. Now he wants to add something specific to the said pleadings. It is further stated that, in fact defendant Nos.2 and 3 are adjacent land owners to the extent of their specific shares. Their names are in the revenue record. However, as a family arrangement, defendant No.1 is in actual possession and cultivating the said adjacent portion. It is further submitted that this being internal family arrangement plaintiff could not know about it. As soon as he came to know about this fact, he has filed this application. It is further submitted that in the plaint, there are certain other errors in the pleading while the plaint was being typed in. In paragraph No. 2 boundaries of the suit property are wrongly mentioned. Instead of **North, South** and instead of **South, North** is typed in. This mistake is also necessary to be corrected. It is further submitted that in the boundaries, after the name of West - Patloba Shripati Nagargoje, sentence - **“in actual possession but on record ownership as per 7/12 extract is with defendant Nos. 2 & 3”** - be added. In para No.3 of the plaint at line No.10 before 00-H. 11-R. word - **“about”** is required to be added.

Details of proposed amendment are given by the applicant in the application.

4. It is submitted by the defendants that the plaintiff is trying to fill up the lacuna in the suit by proposed amendment. The defendants have filed their written statement. Issues are framed and the suit is posted for evidence. The application is belated and filed only with a view to prolong the litigation. Proposed amendment is vague. It is not necessary. In case the amendment is allowed it will change the nature of the suit and thereby prejudice will be caused to these defendants. Therefore, it is prayed by the defendants to reject the application with costs.
5. On the basis of rival pleadings and submissions on behalf of respective parties, following points arise for my determination, the findings against them are recorded for the reasons discussed under.

Points for determination

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

R E A S O N S

6. Defendants are the brothers inter se and it is admitted fact on record. It is specifically submitted by the plaintiff that the adjacent land is recorded in the name of defendant Nos.2 &3. But, as a family arrangement, it is being cultivated and in actual possession of defendant No.1. Now this being the family arrangement within the family of defendants,

it could not be expected to be known to the plaintiff. A fact which may not be known to the adverse party cannot be expected to be known by such party. Therefore, the explanation given by the plaintiff that, he came to know about this aspect recently and as soon as he got it to his knowledge, he approached the court for amendment, is acceptable. So far as other amendments are concerned those of typographical errors. As such, are necessary. The proposed amendment is not going to change the nature of the suit. Even if the amendment is allowed, it will not cause any prejudice to the defendants. While considering the application for amendment liberal approach is to be adopted. The proposed amendment is necessary to be allowed for the purpose of preventing multiplicity of litigation. It will also help the court in determining the real question in controversy between the parties and resolve the dispute between the parties for once and all. So far as the delay is concerned, imposing cost on the plaintiff will serve the purpose. Therefore, point No.1 is answered in the affirmative and for 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 to defendants.
- (2)** Applicant do pay the cost amount and carry out proposed amendment within 14 days from today.

(Declared and pronounced in open Court)

Date.10-12-2021

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