

ORDER BELOW EXH. NO.43

1) This is an application filed under Order VI Rule XVII of Civil Procedure Code.

2) It is the contention of plaintiff that, he has filed this suit for declaration of ownership and for perpetual injunction. Plaintiff has also filed temporary injunction application which was rejected by the Court. Defendant by taking advantage of rejection of the application have encroached upon the land of plaintiff. Defendant No.1 have started construction under Ramai Awas Yojana by taking the Government grant and defendant No.2 and 11 also have encroached upon the land of plaintiff by raising tin shade over his land. Therefore, he by way of amendment sought to recovery of the possession of his land by demolishing the construction or by removing the tin shade of the defendants. Thereby he sought to amend the prayer clause.

3. However, defendant No.1 to 3 resisted the application and contended that, they are in possession of the suit property. Plaintiff has not mentioned the area of the land encroached by the defendants and how much and from whom the encroached portion of the land they are seeking from the defendants. No cause of action mentioned in the application. No date of encroachment is mentioned. The application is vague. Plaintiff by way of the suit claimed the possession over the suit property and also sought

temporary injunction on the basis of his possession over the suit property. But as his application is rejected, he is trying to reconstruct the suit by seeking amendment. If the application is allowed, nature of suit will be changed and will affect the rights of the defendants. The separate remedy is available to the plaintiff. Therefore, prayed to reject the application.

4. Heard the Learned advocate for plaintiff. Perused the records of the case. It is seen that, Plaintiff has filed this suit for declaration and injunction. By way of filing this suit plaintiff is claiming possession over the suit property. Now by way of this amendment application, he is trying to sought the possession of encroached portion of land from the defendants. However, he has not yet carried out measurement of his property and vaguely mentioned that, defendants have encroached upon his land. No area of the encroachment portion of the land has been mentioned in the application. He has not given any description regarding the date of encroachment, actual encroached area and who is in illegal possession. Plaintiff has also not mentioned the date of cause of action. If the application is allowed, the nature of suit will be changed. Therefore, application is not tenable and liable to be rejected. Hence the following order.

ORDER

1. The application stands rejected.

Date:- 31/12/2018.

(V. D.Bhosale)
Civil Judge, J.D., Ausa.

