

**R.C.S. No. 520/2017**  
**Balasaheb Vs. Balasaheb and**  
**others**

**:: ORDER BELOW EXH. 58 ::**  
**( CNR NO.MHLA140013062017 )**

The plaintiff has made this application under Rule-17 of Order-VI of the C.P.C.,1908 for amendment of plaint.

2. The plaintiff submitted that, he has filed an application for temporary injunction and said application was rejected. The defendant no. 1 to 3, 6, 10 and 11 by taking advantage of said order of temporary injunction have made encroachment upon his land. Therefore, the plaintiff by way of present amendment prayed for recovery of possession of encroached area of land.

3. The defendant no. 1 to 3 filed their reply to the instant application below Exh. 64 and thereby strongly opposed the application. They submitted that the plaintiff has already made an application for amendment of plaint below Exh. 43 which was rejected by the Court. Thereafter, plaintiff has filed writ petition before the Hon'ble Bombay High Court, Bench at Aurangabad. Said writ petition is also dismissed by the Hon'ble High Court. This application is made on false ground. Nature of suit will be changed if the application is allowed. Further, injustice would be caused to the defendants. Accordingly, they prayed to reject the application. Several opportunities of hearing were given to the other defendants, but they failed to file reply, hence, this application

proceeded without their reply.

4. Perused the contents of application and say filed thereon. Heard learned advocate Shri. R.M.Shaikh for the plaintiff and learned advocate Shri.S.H.Patel for the defendant no. 1 to 3. Other defendants failed to argue the application. Hence, the application proceeded without their argument.

5. On careful perusal of record it is clearly shown that prior to this application plaintiff has filed application for amendment of plaint below Exh. 43 and said application was rejected on 31.12.2018. Thereafter, the plaintiff has filed writ petition bearing no. 4241/2020 before the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad and said writ petition was dismissed by the Hon'ble High Court. However, the Hon'ble High Court in para-4 of said writ petition held that...,

*“.....to avoid multiplicity of proceeding the liberty is granted to the petitioner to the file application for amendment for giving particular and details as are mentioned by the trial Court in the impugned. If such application is filed, the same shall be considered on it's own merits, by the trial Court, after given opportunity of hearing to the parties.”*

6. In view of liberty granted by the Hon'ble High Court this application is moved by the plaintiff. Hence, in view of the directions given by the Hon'ble High Court in writ petition no.

4241/2020 this application is taken into consideration. The plaintiff has specifically mentioned in the application that after rejection of application of temporary injunction the defendant no. 1 to 3, 6, 10 and 11 have made encroachment upon his land. He has also given detail description of the encroached area and the date on which he was dispossessed from the encroached area.

7. Admittedly, this application is filed on the basis of subsequent acts of the defendants. The plaintiff has originally filed this suit for declaration and injunction. And now he wants to add one more prayer i.e. recovery of encroached portion of the land. On careful perusal of proposed amendment it is clearly shown that no nature of suit will be changed because the plaintiff wants to add one additional prayer of recovery of possession which is based upon the subsequent act of the defendants.

8. Further, no injustice or prejudice would be caused to the defendants and no nature of suit will be changed if this application is allowed. Admittedly, no trial is yet to be commenced and the application is within the ambit of Rule-17 of Order-VI of the Civil Procedure Code, 1908. Hence, considering the nature of proposed amendment, nature of suit and to prevent multiplicity of the proceedings, this application deserves to be allowed. Accordingly, I proceed to pass the following order.

**:: ORDER ::**

1. Application (**Exh.58**) is allowed subject to costs of Rs.500/-.

2. Plaintiff shall carry out the amendment on or before next date and directed to expedite the matter.

*(Dictated and pronounced in open Court.)*

Ausa.

Date: 05.10.2023.

**( N. B. Rathod)**

3<sup>rd</sup> Jt.Civil Judge J. D., Ausa.

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