

Order below Exh - 49

This is an application under Order 6, Rule 17 of the Code of Civil Procedure filed by the plaintiffs for amendment in the plaint.

2] Perused the application, say and record of the case. Heard learned advocates for both the sides.

3] This is suit for perpetual injunction. It is case of the plaintiffs that they are owner and in possession of the suit properties bearing Gut no. 122/2/A, 122/2/B & 122/2/C. It is case that the defendants obstructed the plaintiffs from cultivating the suit properties. During the pendency of the suit, the defendants encroached over the suit properties. Therefore, it is necessary to carry out the amendment for seeking possession of encroached portion.

4] Learned advocate for the plaintiffs submitted that, measurement carried out by the TILR clearly shows that there is encroachment over the suit properties by the defendants. Hence, he prayed to allow the application. Learned advocate for the defendants strongly opposed the application and submitted that the proposed amendment will change nature of the suit. The plaintiffs are filling the lacuna in their case by view of amendment. Hence, he prayed to reject the application.

5] In view of Rule 17 of Order 6 of the Code, the court

may at any stage of the proceeding allow to carryout the amendment. No prejudice will be caused to the defendants by granting permission of amendment. On perusal of the application for amendment in the light of contentions in plaint, it is seen that the proposed amendment will not change the nature of suit. Hence, it will just and proper to grant permission for amendment of plaint to avoid multiplicity of the proceeding and for the purpose of determining the real questions in controversy between the parties. Hence, I proceed to pass following order.

ORDER

- 1) The application at Exh. 49 is allowed.
- 2) The plaintiffs are permitted to amend his plaint on or before next date and file amended copy of plaint on record.
- 3) Plaintiffs are directed to pay requisite court fees accordingly.

Date – 31.07.2017

(M. B. Patil)
C.J.J.D., Dhadgaon