

ORDER BELOW EXH. 106 IN RCS No. 36 / 2014
Prabhawati Kalsha Vasave Vs. Smitkumar Kantilal Walwi & oth.

This is an application under Order VI Rule 17 of C.P.C. for carrying amendment in the plaint.

02- Contentions of plaintiff, in short, are as under.

The suit is for perpetual injunction as well as mandatory injunction. An application for temporary injunction was also moved by plaintiff, which was allowed *vide* order dated 06.01.2016. Defendants committed breach of said order of court. Therefore, plaintiff moved an application under Order XXXIX Rule 2-A of C.P.C. In the said proceeding, T.I.L.R. was appointed as Court Commissioner for the purpose of spot inspection. From the report of Court Commissioner filed in said proceeding, plaintiff come to know that during pendency of suit defendants carried out illegal construction over the suit property. Pursuant thereto, plaintiff is now intending to make consequential amendment in the proceeding regarding the relief of mandatory injunction against said defendants. Accordingly this application.

03- Say of defendants is at Exh. 112. According to them, the contentions of plaintiff are false and baseless. There is no nexus between this suit and the report of T.I.L.R. filed in the proceeding under Order XXXIX Rule 2-A of C.P.C. (Civil M.A.No. 18/2016). The area of alleged construction is also not clear from proposed amendment as well as report of T.I.L.R. The proposed amendment is not at all necessary to decide the real controversy involved in the suit. Moreover, if it is allowed, it will change the nature of the suit. He accordingly requested to reject the application.

04- Heard learned Advocate Shri S. R. Rane for plaintiff and learned Advocate Shri S. V. Wani for defendants. Also gone through record and proceeding.

05- At the outset it is necessary to mention that the suit was posted for framing issues when the application is moved. As such strict rigour of provisions of Order VI Rule 17 is not applicable at this juncture.

06- Record goes to show that the application for temporary injunction filed by plaintiff was partly allowed and thereby certain restrictions were imposed on defendants. Whether defendants committed breach of said order or not is a question to be determined in another proceeding filed by plaintiff (i.e. Civil M.A. No. 18/2016 filed under Order XXXIX Rule 2-A of C.P.C.). However, owing to said alleged construction activity, it is clear that rights of plaintiff over the suit property are infringed and for which he is intending to seek consequential relief of mandatory injunction. If there is no consequential relief claimed in the pleading, there will be a technical hurdle for the plaintiff to taste the fruits of decree, if passed in his favour. Moreover, since neither issues are framed nor trial of the suit has commenced, there is absolutely no reason to reject the application, as the provisions itself mandate so.

07- Thus, for the abovesaid reasons, I am of the view that the application deserves to be allowed. Accordingly following order.

ORDER

- 1]** Application is allowed.
- 2]** Plaintiff is directed to carry out suitable amendment in the pleading as well as to file amended plaint on or before next date.
- 3]** Cost to be in the cause.

Signed/-

(Anand D. Karbhajan)

Civil Judge (Junior Division),
Akkalkuwa, Dist. Nandurbar

Date : 11/06/2019

Place : Akkalkuwa