

Order on Application Ex. 32

1. This is an application by the plaintiff to amend the plaint in order to delete the prayer of perpetual injunction and to seek recovery of possession on the ground that, during pendency of the suit defendant No.1 has encroached on the portion of the suit land.

2. In brief, the application alleges that, the plaintiff has filed a suit for declaration of ownership with a relief of perpetual injunction to restrain the defendants from obstructing into his possession. A piece of land admeasuring about 1 ½ acres to 2 acres is situated beyond a road passing through the suit land. The plaintiff has filed a face map. After hearing the parties, this Court has rejected the temporary injunction application mainly on the ground that, the plaintiff is not certain about location and area of his land towards Southern side after road. Taking undue advantage of rejection of temporary injunction, defendant No.1 with the help of her associates has encroached on the suit land, situated on the Southern side of road, admeasuring 1 ½ acre to 2 acres. She started spreading pesticides on the cotton crop planted by the plaintiff and did not allow him to enter said land. Therefore, it has become necessary for the plaintiff to seek recovery of possession of said land coupled with the relief of fixation of its boundaries and measurement so as to ascertain exact area of encroachment. Therefore, the relief of perpetual injunction is to be deleted from claim clause as well as relief clause. A new claim and prayer clause is to be added seeking fixation of boundaries, of measurement of said land and the recovery of possession of encroached area from defendant No.1. Consequent change in the valuation clause are also to be introduced. Therefore, the allegations of encroachment and other changes are sought to be added by way of amendment.

3. Application is opposed on the ground that, the amendment will change nature of the suit. The amendment sought is nothing but an effort to fill up the lacuna. The petition is filed after dismissal of temporary injunction application. The amendment is purely based upon the observations of this Court.

4. Perused. Heard.

5. The plaintiff has sought amendment in the plaint on the ground that, after rejection of temporary injunction application defendant No.1 with the active help of others, has encroached on the suit land and took possession of 1 ½ acre to 2 acres land situated towards South of the road. On the basis of said incident, allegedly taken place during pendency of the suit, the amendment is sought to delete the relief of perpetual injunction and to seek fixation of boundaries and measurement of encroached portion and the recovery of possession thereof. Necessary amendment in the claim cause, relief clause and valuation clause is also sought.

6. Amendment is mainly opposed on the ground that, the amendment will change nature of the suit.

7. It needs to be mentioned that, if the amendment sought to be introduced is based on an event that had taken place during pendency of the suit, then in that case the amendment needs to be allowed even though it changes the nature of the suit, moreover when the happening of the event is attributed to the voluntarily acts of the defendants. Same is the position in this case. Though, it is disputed that, defendant No.1 obtained possession of the alleged encroached portion during pendency of the suit, such disputed question of fact cannot be gone into while deciding the application for amendment. Where such incident took place or not would be a question to be gone into during trial.

8. In view of above quoted legal position therefore, when the plaintiff alleges happening of event or incident during pendency of the suit and attributes its authorship to defendant No.1, the amendment necessitated due to such incident needs to be allowed.

9. So far as the objection of the filling up the lacuna is concerned, said objection will not sustain as the amendment is alleged to be the outcome of an incident that has taken place during pendency of the suit.

10. In the result, I hold that, the amendment as sought needs to be allowed so as to curtail the multiplicity of litigation. One of the aims of amendment is to see that the *lis* between the parties would be decided in same suit. In view of this, I pass following order.

ORDER

- 1- Application is allowed.
- 2- Plaintiff shall carry out the amendment on or before 06-1-2014.
- 3- The defendants are at liberty to file additional written statement.
- 4- Costs in cause.

Sd/-

Date: 27-10-2014

(A. N. Mare)
Civil Judge S.D., Biloli.

CERTIFICATE

I affirm that the contents of this P.D.F. file Judgment/order are same word to word, as per the original judgment.

Name of the Stenographer : A. M. Onkare

Court Name: Civil Judge Senior Division, Biloli.

Date: 27-10-2014.

Judgment signed by the Presiding Officer on 29-10-2014.

Judgment/order uploaded on : 29-10-2014.