

**ORDER BELOW EXH. 29**

(Passed on 11<sup>th</sup> August, 2016)

This is an application filed by the plaintiff under order 6 Rule 17 of the Code of Civil Procedure.

2. The plaintiff's/applicant's case in a nut shell is as follows :

It is the contention of the plaintiff that she has filed the present suit for declaration, possession and for mandatory injunction. It is averred that the plaintiff is having her residential house at Mouza Rangmangali, bearing house no. 6, ward no. 2, G.P. Navegaon Deshmukh, Tah. Bhiwapur (hereinafter referred as the suit house). The suit house is built up by her out of the government fund, she got in housing scheme from the government. Towards east of that house there is an agriculture land of the defendant. He had made a wire fencing illegally to the suit house of the plaintiff and illegally took possession of the suit house and therefore the present plaintiff came up with the present suit, the plaintiff now built up a wall compound in front of the suit house and therefore, the use of the suit house itself has stopped. Plaintiff previously at the time of filing of the suit has prayed for removal of the wire fencing made by the

defendant. Now the plaintiff seeks amendment that the wall compound construction made by the defendant be removed by him.

3. The defendant has filed his say on the present application and has contended that the defendant has not made any encroachment upon the suit house of the plaintiff. He has not built a wall compound. However, he has built a tin compound. The averments made by the plaintiff in the present application are totally false and therefore it is prayed that the application filed for amendment in the suit be rejected.

4. On the rival pleadings of the parties, the following points arise for my consideration. My findings thereon are as follows for the following reasons.

<u>Points</u>	<u>Findings</u>
1 Does the proposed amendment is : necessary ?	<b>Affirmative</b>
2 Does the proposed amendment : changes the nature of the suit and prejudices the defendant ?	<b>Affirmative</b>

3 What order ?

: **Allowed as per  
final order**

### **REASONS**

#### **AS TO POINT NO. 1 TO 3 :-**

5. Considering the material on record, I have taken point no. 1 to 3 together for discussion.

6. The suit is filed for removal of wire fencing. The nature of suit is thus a suit for mandatory injunction. Now the plaintiff is seeking removal of encroachment of wall compound / tin compound. By way of the present amendment also the relief claimed by the plaintiff is seen similar. Therefore, one thing becomes clear that the nature of the suit is not going to be changed.

7. The present application is moved by the plaintiff when the construction is made by the defendant of a compound. It is an admitted position that defendant has removed a wire fencing. The defendant admits in his reply that he has constructed a tin compound and not a wall compound. However, this is a matter of dispute which requires to be decided on merit after both parties adduced their evidence. Only after evidence it can be seen whether

there is a wall compound or a tin compound. Thus, it is observed that the cause of action for moving the present application has arisen recently to the plaintiff. It is nowhere objection of the defendant that the present application is moved by the plaintiff belatedly. Therefore, there is no question of delay.

8. The plaintiff moved the present application in the facts and circumstances when he has arisen a cause of action. As earlier observed the nature of the suit is not going to be changed. Thus, there arises no question at all about prejudice being caused to the defendant. As the wall (compound) is constructed later on by the defendant, the amendment is seen *sine qua non*. Evidence of both the parties is yet to begin. So, I find that the proposed amendment needs to be incorporated in the suit by the plaintiff. No prejudice is seen going to be caused to the defendant. So, I answer point no. 1 & 2 in the affirmative and in answer to point no. 3, I proceed to pass the following order.

## **ORDER**

[01] The amendment application on Exh.29 is allowed.

[02] The plaintiff to carry out the amendment within  
14 days from the date of this order.

[03] No order as to costs.

R.C.S. 33/2015 (Vasantabai Vs.Vinay)

[5]

Exh.29

Date: 11/08/2016.

[ S.A.Khalane ]  
Civil Judge Junior Division,  
Bhiwapur.