

MHNS130004632008



R.C.S.No.21/2008

Ranjana Tukaram Mogal etc
3 V/s Suresh Manohar
Bhandare

ORDER BELOW EXHIBIT 139

In a suit for declaration, perpetual injunction, the plaintiffs have moved present application U/O VI R.17 of the Code of Civil Procedure, 1908 for amendment of plaint.

2. Perused the application, say filed below Exh.141. Heard Ld. Advocates for both the parties and considered their submissions.

3. As per the plaintiffs during pendency of present matter certain circumstances have changed and subsequent development occurred in respect of the suit property. T.I.L.R was appointed in this matter vide Exh.134 for conducting joint measurement of suit properties. Accordingly, suit properties are measured on 30.01.2024 and commissioner's report at Exh.137 reveals encroachment to the extent of 55R upon plaintiff's land by the defendants. Hence, plaintiffs want to carry out certain amendments and add certain contents as a para no.17A and 20D after para-No.17, 20C in his plaint. By way of amendment, they also want to delete entire para no.24C of the plaint and want it to substitute with proposed amendment along with prayer of recovery of possession.

4. On the other hand, defendants have opposed the application stating that, suit is filed in the year 2008, and after 17 years present application is filed at the stage of argument. Ld. Advocate for the defendant submitted that, at the time of filing this

suit plaintiffs have pleaded that defendants have encroached upon and have acquired certain portion of the suit land, however they did not file any document showing alleged encroachment. The plaintiffs at the stage of argument, with the help of report of T.I.L.R trying to bring the fact on record. Plaintiffs are trying to prove those facts of encroachment on the basis of said T.I.L.R's report. The plaintiffs by way of amendment are trying to recover the possession of alleged encroachment without pleading as to when encroachment took place etc. He further submitted that, delay caused for moving amendment application is not explained. Hence, he prayed to reject the application.

5. Heard learned advocates for plaintiffs and defendants. Considered their submissions. Points for determination along with my findings thereon, for the reasons are as under:

Sr. No.	<u>Points for determination</u>	Findings
1.	Whether the proposed amendments need to be allowed?	Yes.
2.	Whether the proposed amendment changes nature of the suit?	No.
3.	What order?	Allowed.

:: REASONS ::

AS TO POINT NOS. 1 AND 2 :-

6. As these points are interconnected, I have taken them together for discussion in order to avoid repetitions of facts. Learned Adv. Shri.S.M. Shinde appearing for the plaintiffs submitted that the plaintiffs have filed this suit for declaration that properties

mentioned in para 1A and 1B of the plaint are owned and possessed by them and also prayed for relief of perpetual injunction that defendants shall not obstruct the peaceful p-possession of the plaintiffs over the suit properties. It is also pleaded that defendants have planted trees and crops, carried out pipeline work in said property and thereby defendants have encroached upon the property of the plaintiffs. He submitted that, he applied for joint measurement through T.I.L.R. Report shows 55R encroachment by the defendants over the suit land of the plaintiffs. Thus, in view of Issue No.2 framed below Exh.20 that “whether plaintiffs prove that defendants encroached upon Gat.No.914”? proposed amendment is necessary.

7. On the other hand, Ld. Advocate Shri.V.B. Deshamane for the defendants submitted that, to what extent and since when defendants have encroached upon the land of the plaintiffs is not pleaded in the plaint of the plaintiffs. He further submitted that the application is filed at the stage of final argument. If it is allowed it will change the nature of suit and cause prejudice and hardship on the rights of the defendants.

8. On perusal of record, prima facie it appears that this suit is instituted in the year 2008, wherein Plaintiffs have pleaded encroachment at the hands of the defendants and have had also prayed for appointment of court commissioner for removal of encroachment at the instance of defendants on the eastern side of suit property. Issues are framed on Exh.20. Evidence of both the parties is concluded vide evidence close

pursis below Exh.111 and Exh.122 respectively. At the stage of argument plaintiffs moved application below Exh.134 for joint measurement of the suit property. My Ld. Predecessor allowed the said application on 03.10.2023 and appointed T.I.L.R, Niphad to carry out joint measurement of the suit properties mentioned in para 1A, 1B and 1C. Accordingly, T.I.L.R, Niphad carried out the measurement and submitted its Report vide Exh.138.

9. It is well settled that when encroachment is pleaded, to know to what extent such encroachment exists joint measurement of suit properties is necessary. Therefore, though at the time of filing of the suit actual area of encroachment was not known to the plaintiffs, during the pendency of the suit joint measurement of fields of the plaintiffs and defendants is carried out. On perusal of T.I.L.R Report at Exh.138 prima facie it appears that 55R land is in possession of the defendants. The report shows encroachment by the defendants to the extent of 55R. These subsequent events have made it expedient for the plaintiff to apply for the amendments for the purpose of determining the real question in controversy in the suit. So far as delay for moving the present application is concerned, this application is moved immediately after T.I.L.R Report. No doubt, the plaintiff filed application for measurement at the stage of final argument, but it cannot be the sole ground to reject the same.

10. The present suit is for perpetual and mandatory injunction etc. wherein legal rights of plaintiff are involved. The proposed amendment is in respect of the facts. Hence, considering the nature of the suit and nature of proposed amendment, I am of the view that proposed amendment is necessary to decide the real question in controversy between the parties. If the proposed amendment is allowed, then it will not change the nature of the suit. The defendants will get an opportunity to challenge the amendment and hence no prejudice will be caused to them. Therefore, in order to avoid further litigations this application deserves to be allowed. Under such circumstances, I answer to the point no.1 and 2 in affirmative and as an answer to point no.3, I pass following order:

ORDER

- 1) Application is allowed.
- 2) Plaintiff is permitted to carry out the necessary amendments in the plaint as prayed in this application.
- 3) Proposed amendments shall carry out and plaintiff shall file copies of amended paint within 14 days from this order.
- 4) Cost in main cause.

Date :- 08/07/2025
Place :- Pimpalgaon (B).

Sd/-xxxx
(V. W. Khendad)
2nd Jt.Civil Judicial Junior Division
Pimpalgaon (B)