

ORDER BELOW EX. 31.

(Passed On 02nd February 2021)

1. This is an application under Order 6 Rule 17 of C.P.C for amendment of plaint preferred by plaintiff.

2. Perused the application and read the reply. I have heard Mr. P.D Pawar learned counsel for plaintiff and Mr. S.K Kulkarni learned counsel for defendant.

3. Mr. Pawar submitted that plaintiff has filed present suit for appointment of T.I.L.R. as Court Commissioner, possession of encroached portion of suit land and permanent injunction against defendant. Mr. Pawar submitted that plaintiff had preferred application for measurement of suit land at Ex.17 but however this Court was pleased to reject the said application. Mr. Pawar submitted that thereafter defendant took the advantage and encroached suit land to the extent East-West 12 feet to 15 feet and North-South 0.55 HR to 0.60 HR. Mr. Pawar submitted that defendant has also erected 08 iron angles in his grapes field that too in the central part of suit land. Mr. Pawar submitted that already measurement map of entire Gat No. 143 is filed on record. In order to substantiate his submission, Mr. Pawar invited my attention towards the measurement map filed on record to show the suit way in the suit land as depicted in measurement map. Mr. Pawar submitted that as suit land is encroached by defendant as stated in the present application, he is constrained to prefer present amendment application for amendment of his plaint. Mr. Pawar submitted that the proposed amendment as described in the instant application as para 5A and para 8A needs to be incorporated in order to avoid any complication and to avoid any

technical defect in the present suit. Mr. Pawar submitted that is aforesaid material facts needs to be inserted in plaint by way of amendment being very material for proper adjudication of matter.

4. Mr. Pawar submitted that proposed amendment as described in the instant application is necessary being formal, very essential and material for the fair disposal of suit. Mr. Pawar submitted that if the said proposed amendment as described in present application is not allowed great prejudice and irreparable loss would be caused to plaintiff. Mr. Pawar submitted in consonance to his application. Mr. Pawar submitted that proposed amendment is just and proper and it does not change the nature of suit and plaint needs to be amended and accordingly prayed to allow the instant application.

5. Mr. Kulkarni learned counsel for defendant submitted that the nature of amendment is belated and it changes the nature of suit and great prejudice would be caused to defendant. Mr. Kulkarni submitted that the instant application is filed on 24/09/2019 and present suit was filed on 15/07/2015 this itself reveals the vigilance, diligence, conduct and bonafides of plaintiff. Mr. Kulkarni submitted that proposed amendment, if it is allowed would change the very nature of suit and great prejudice would be caused to defendant. Mr. Kulkarni submitted that plaintiff is trying to fill lacuna by amending his plaint and present application is not tenable. Mr. Kulkarni submitted that plaintiff is deliberately trying to delay the present matter for one or the other reasons. Mr. Kulkarni submitted that already this Court had rejected application of plaintiffs for appointment of T.I.L.R. as Court Commissioner for measurement of suit land at Ex.17 for the reasons stated out in application. Mr. Kulkarni submitted that

measurement map filed on record is not in consonance with the factual position of suit land. Mr. Kulkarni submitted that defendant has not encroached on any portion of suit land as submitted by plaintiff. Mr. Kulkarni submitted that facts stated in proposed amendment were well within the knowledge of plaintiff at the time of instituting the suit. Mr. Kulkarni submitted in consonance to his reply at Ex.33 and vehemently opposed the instant application and prayed to the reject the instant application with costs.

6. In case of Baldev Singh and Others Vs. Manohar Singh and Another, 2006 (3) Bom C J 185 = 2006 (5) Mh.L.J 634 SC Hon'ble Supreme Court held that it is well settled that court should be extremely liberal in granting prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to other side.

7. In case of B.K.N. Pillai Vs. Pillai and Another, AIR 2000 SC 614 the Hon'ble Supreme Court held that application for amendment cannot be rejected merely on ground of prolonged delay in filing, especially when other party can be compensated by cost.

8. In case of Chakreshwari Construction Pvt. Ltd. Vs. Manohar Lal, 2017 (5) Mh.L.J SC wherein Hon'ble Supreme Court has held that parties are permitted to amend their pleadings at any stage not only during pendency of trial but also at first and second appellate stage with leave of Court provided that proposed amendment is bona fide, relevant and necessary for deciding rights of parties involved in lis. The Hon'ble Supreme Court relied on Revajeetu Builders and Developers Vs. Narayanaswamy and

Sons and others, 2009 MhLOnline (S.C.) 12 = (2009) 10 SCC 84

wherein Hon'ble Supreme Court has held in Para 63 as under-

Para 63:- *On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:*

(1) whether the amendment sought is imperative for proper and effective adjudication of the case;

(2) whether the application for amendment is bona fide or mala fide;

(3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) whether the proposed amendment con-stitutionally or fundamentally changes the nature and character of the case? and

(6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive.

9. It is well settled by a Catina of decisions of Hon'ble High courts and Hon'ble Supreme Court that allowing and rejecting an application for amendment of plaint is really the discretion of the court and the amendment of the plaint also should not be refused on technical grounds.

10. On going through the application for amendment in the light of averment in plaint, written statement and arguments canvassed before me it is seen that the amendment sought is bona fide. It is pertinent to mention that present matter is of the year 2015 and present application is preferred after lapse of around 4 years. It is pertinent to mention that plaintiff suit is for possession of encroached portion of suit land for permanant injuction and yet the issues are not framed. The present suit was fixed for Hearing/ Arguments on Ex.5 and then the plaintiff preferred present application. This itself reveals the conduct, bonafaides, vigilance and diligence of plaintiff in the present matter. This court is satisfied that proposed amendment is necessary for the purpose of determining the real questions in controversy between the parties, avoiding multiplicity of suits, for the fair adjudication of trial and no prejudice would be caused to defendant, if he is compensated by way of costs. In the result, applying the ratio of cases cited supra I am inclined to pass the following order.

ORDER

1. The application at Ex. 31 is allowed.
2. The plaintiff is allowed to amend plaint within two weeks subject to payment of cost of Rs. 500/- (Five Hundred Only)

in the Court for defendant & Rs. 500/- (Five Hundred Only)
in DLSA/TLSA.

3. The defendant is allowed to withdraw amount of their cost after deposition in Court by plaintiff.
4. The plaintiff is directed to file fresh amended copy of plaint on record.

Place:- Chandwad

Date:- 02/02/2021.

(N. A Ingley)
Civil Judge Junior Division
Chandwad

CERTIFICATE

I affirm that the contents of this PDF file are same word for word as per original order.

Name of Stenographer :- Kum. D. D. Dhoke.

Court Name :- Civil Judge J.D.Chandwad.

Date of Decision :- 02-02-2021.

Signed by presiding :-

officer :- 02-02-2021 .

Uploaded on :- 03-02-2021.