

**ORDER BELOW EX. 35****(Passed On 4<sup>th</sup> March 2020)**

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

2. Perused the application and read the reply. I have heard Mr. D.R Gangurde learned counsel for plaintiffs and Mr. S.D Jadhav learned counsel for defendants.

3. Mr. Gangurde submitted that plaintiffs have filed present suit for appointment of T.I.L.R as Court Commissioner, possession of encroached portion of suit land and permanent injunction against defendants. Mr. Gangurde submitted that plaintiffs had preferred application for measurement of suit land at Ex. 31 but however this Court was pleased to reject the said application. Mr. Gangurde submitted that thereafter plaintiffs on their own had applied for measurement of suit land to T.I.L.R and accordingly cadastral surveyor had measured suit land after giving notices to the other party and he had carried out measurement of suit land as per rules and law. Mr. Gangurde submitted that thereafter cadastral surveyor has given his report and measurement map and has shown encroachment to the extent of 0.02 HR of defendant No. 1 to 3 and defendant No. 7 to 10 over suit land and encroachment to the extent of 0.11 HR of defendant No. 2, 4 to 6 over suit land. In order to substantiate his submissions, Mr. Gangurde invited my attention towards the measurement map filed on record to show the extent of encroachment of defendants and in total

encroachment over suit land as depicted in measurement map. Mr. Gangurde submitted that as measurement map is filed on record and encroachment to the extent of 0.11 HR and 0.02 HR of defendants are shown in the measurement map hence, he is constrained to prefer present amendment application for amendment of his plaint. Mr. Gangurde submitted that the proposed amendment as described in the instant application as para 3a, para 5a and para 9a needs to be incorporated in order to avoid any complication and to avoid any technical defect in the present suit. Mr. Gangurde 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. Gangurde 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. Gangurde submitted that if the said proposed amendment as described in instant application is not allowed great prejudice and irreparable loss would be caused to plaintiff. Mr. Gangurde submitted in consonance to his application. Mr. Gangurde 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. Jadhav learned counsel for defendants submitted that the nature of amendment is belated and it changes the nature of suit and great prejudice would be caused to defendants. Mr.

Jadhav submitted that the instant application is filed on 20/90/2019 and present suit was filed on 04/08/2015 this itself reveals the vigilance, diligence, conduct and bonafides of plaintiff. Mr. Jadhav submitted that proposed amendment, if it is allowed would change the very nature of suit and great prejudice would be caused to defendants. Mr. Jadhav submitted that plaintiffs are trying to fill lacuna by amending their plaint and present application is not tenable. Mr. Jadhav submitted that plaintiffs are deliberately trying to delay the present matter for one or the other reasons. Mr. Jadhav 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. 31 for the reasons stated out in application. Mr. Jadhav submitted that measurement map filed on record is not in consonance with the factual position of suit land. Mr. Jadhav submitted that defendants have not encroached on any portion of suit land as submitted by plaintiffs. Mr. Jadhav submitted that the facts stated in proposed amendment were well within the knowledge of plaintiffs at the time of instituting the suit. Mr. Jadhav submitted in consonance to his reply at Ex. 55 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 constitutionally 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 9 years but however cadastral surveyor has given his report by way of measurement map filed on record by plaintiffs. It is pertinent to mention that plaintiffs suit is for possession of encroached portion of suit land and for permanent injunction and yet the issues are not framed. The present suit was fixed for framing issues and then the plaintiffs preferred present application. This itself reveals the conduct, bonafides, vigilance and diligence of plaintiffs in the present matter. It is pertinent to mention that present application is filed by plaintiffs after 7 months after giving of report and measurement map by cadastral surveyor. It is pertinent to mention Measurement map filed on record also depicts the extent of encroachment by defendants over the suit land and the total extent of encroachment by defendants on suit land is of 0.13 HR land. 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 defendants, if they are 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. 35 is allowed.
2. The plaintiffs are allowed to amend heir plaint within two weeks subject to payment of cost of Rs. 350/- (Three Hundred

and fifty Only) in the Court for defendants & Rs. 350/- (Three Hundred Only) in TLSA.

3. The defendants are allowed to withdraw amount of their cost after deposition in Court by plaintiff and they shall take the cost in their proportion.

4. The plaintiffs are directed to file fresh amended copy of plaint on record.

**Place:-** Chandwad

**Date:-** 04/03/2020.

(N. A Ingley)

Civil Judge Junior Division

Chandwad