

ORDER PASSED BELOW EXH. 86 IN R.C.S. NO. 159/2011

1. The plaintiffs have filed application under Order VI, Rule 17 of the Code of Civil Procedure, 1908 for amendment of the plaint. Defendants have resisted the application.
2. I have heard Ld. Advocate for the plaintiffs and Ld. Advocate for the defendants. Ld. Adv. For the plaintiff submitted that proposed defendants No. 7 to 11 have made encroachment over the suit property therefore, they are necessary parties to the suit. The amendment would not change nature of the suit. Therefore, application may be allowed. Ld. Adv. For defendant No. 1 & 2 submitted that the application is false, measurement of the suit property is incorrect. Contents of the application are vague. Therefore application may be rejected.
3. Perused the application, say, plaint, and record of the suit. The plaintiffs have filed suit for declaration and perpetual injunction. The plaintiffs have contended that they are owner and possessors of the suit property, defendants have obstructed their possession over the suit property. It seems that during pendency of the suit Court Commissioner was appointed for measurement of Gat No. 373, 374, 338, 371, 372, 369 & 370. The Court Commissioner has carried out measurement of the said properties and filed his report at Exh. 85. Primaface at the stage measurement map shows that proposed defendants No. 7 to 11 and defendant No.1 have made encroachment over the suit property. Therefore, the plaintiff wants to implied defendant Nos. 7 to 11. The plaintiff wants to insert prayers in the form of mesne profits, possession of encroach land from defendant Nos. 1, 7 to 11. The proposed amendment would not change nature of the suit. Issue have been framed at Exh. 68. However plaintiff has not filed his evidence affidavit. Therefore

trial is not commenced yet. The amendment is necessary for deciding real controversy between the parties. The amendment is necessary for avoiding multiplicity of proceedings. From above discussion, I am of the view that the application deserves to be allowed. Hence, I proceed to pass the following order.

ORDER

1. The application is allowed.
2. The plaintiff shall carry out the amendment, within 14 days from today and file copies of the amended plaint.
3. The plaintiff shall amend suit valuation clause and pay necessary Court Fee.
4. Costs in cause.

Kallam.
Date-09.01.2019.

(M.B. Kudte),
2nd Jt. Civil Judge,
J.D., Kallam.