

R.C.S.NO.287/2013
Ashok/Shahaji

ORDER BELOW EXH.113

1. The present application has been filed by plaintiff seeking amendment in the plaint under order 6 Rule 17 of C.P.C. It is contended that, in the present suit T.I.L.R., Paranda was appointed as court commissioner for measurement of the property of plaintiff and defendant. Accordingly, the T.I.L.R. Paranda has filed the measurement map along with his report. In the said map, it is disclosed that the defendant has encroached upon 06 R. area over the plaintiff's property. Therefore, the plaintiff seeks to amend the plaint accordingly for adding the prayer of possession of the encroached area from the defendant and for mesne profits. Hence, prayed for allowing the application.

2. The defendant failed to file say. Heard learned advocate Shri. S.N.Bagal for plaintiffs. Heard learned advocate Shri. D.A.Nikalje for defendant on the law point. Perused the plaint and the entire record. The suit is for injunction. The plaintiffs have sought to restrain the defendant from causing obstruction to the right of plaintiffs to use the water of the well situated in the suit property. In the present suit, T.I.L.R. Paranda has filed measurement map and his report vide Exh.109. The properties of plaintiff and defendant were measured. It appears that the T.I.L.R. Paranda has mentioned regarding encroachment by defendant over the property of plaintiff by 06 R area wherein there is well. The learned advocate on behalf of defendant submitted that the details mentioned in the map about encroachment are not clear and that they are ambiguous. Thus, the plaintiff cannot be permitted to amend the plaint on the basis of the measurement map on record.

3. The T.I.L.R. Paranda has filed its report and map on 05/02/2016 vide Exh.109. The plaintiff has thereafter moved the present application on 05/03/2016. Whether the map shows correct measurements / picture as on the field, is certainly a part of evidence which would be decided on merits. It is also a settled position of law that the court need not go into the merits of the proposed amendment. The plaintiff has sought amendment regarding prayer of recovery of possession of the alleged encroached area as per the map. The proposed amendment is the effect of subsequent event i.e. measurement map and its report. The defendant has filed written statement and counter claim. It is the connection of defendant that the disputed well is owned by him and the plaintiffs do not have any right in the well. However, the plaintiffs case is that plaintiff No.1 is owner of 85 R and plaintiff No.2 has $\frac{1}{2}$ share in the well. Plaintiff No.1 has purchased 4 R area for Rs. One lakh by registered sale deed. Considering the dispute involved in the suit regarding well situated in the property, in my opinion the proposed amendment would certainly help this court in deciding the real controversy between the parties. Furthermore, if the proposed amendment is rejected, then it would lead to multiplicity of proceedings. The proposed amendment would not cause any harm to the defendant, as the defendant certainly can be compensated by way of costs. Considering the real dispute between the parties, in my opinion the proposed amendment would certainly help this court in just decision of the suit. Hence, in such circumstances the proposed amendment regarding recovery of alleged encroached portion from the defendant and the consequential amendment regarding mesne profits, deserves to be allowed. However, subject to costs of Rs. 400/-. Hence, the following order:-

ORDER

- 1) The application is allowed subject to costs of Rs.400/- to be paid to the defendant.

- 2) The plaintiff is allowed to amend the plaint on or before next date.
- 3) The plaintiff to file copy of amended plaint on record.

Date:-05/10/2016

Sd/-
(**Smt. D.S.Chothe**)
2nd Jt.Civil Judge J.D.,Paranda.