



CNR-MHPA110006032014

RCS No. 223/2014
Ganpat Phad Vs Ramesh Phad
(Order Below Exh.44)

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1- Plaintiffs filed this application under Order-6 Rule-17 of the Civil Procedure Code, 1908 (in short “CPC”) for permission to amend plaint by inserting the matter mentioned in this application in the prayer clause of the plaint.

2- It is contended that in this case court commission report and map from TILR officer, Gangakhed filed on 26/04/2023 in respect of suit property. They filed this suit for the recovery of possession of 2.50 R area in the suit property from defendants. However, as per the court commissioner report filed after measurement, plaintiff’s possession have been shown to the extent of 50 Sq.meter. Hence, need arose to amend the plaint. Accordingly, it is prayed to allow them to delete the prayer of the area excluding 2.50 R from Block No. 286 and to insert the prayer excluding 50 Sq. Meter area in possession of plaintiffs, remaining area from 2.50 R in Block No. 268. Accordingly, it is prayed to allow this application.

3- Suit proceeded without written statement of defendant No.1 to 4, 6 and 7 as well as ex-parte against defendant No. 5 and 8. Hence, notice of this application is issued to all the defendants. Despite service of notice and appearance, defendant No. 1 to 4 , 5 and 8 failed to file their say. While defendant No. 6 and 7, despite service of notice failed to appear. Hence, application proceeded further without their say.

4- Heard Ld.Counsel for plaintiffs. Defendant No. 1 to 4, 5, 8 and their Ld.Counsel absent when called out. Hence no argument on their behalf on law point only. Even defendant No.6 and 7 also absent when called out. Hence, no argument on their behalf on law point only.

5- Perused Record and Roznama.

6- This is a suit for declaration and possession filed in the year 2014 against defendant No. 1 to 8. Suit has been proceeded without written statement against defendant No.1 to 4 , 6 and 7 .While it is proceeded ex-



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parte against defendant No. 5 and 8. Plaintiffs have adduced their oral evidence and closed their evidence by pursis vide Exh.29. When the suit was posted for final argument, plaintiffs filed an application vide Exh. 31 for the appointment of TILR Gangakhed as a Court Commissioner. In pursuance of this order, TILR Gangakhed submitted commission report vide Exh. 35 on 13/09/2023. It is fact of record that in this report 50 Sq.meter area has been shown in the possession of plaintiffs. Plaintiffs have claimed recovery of possession of 2.50 R area from Block No. 286 from defendants. Now by this application plaintiffs are seeking to exclude 50 Sq.meter area from 2.50 R area claimed in the prayer clause of the plaint. To this prayer, none of defendants raised objection.

7- As per Order VI Rule 17 of the Civil Procedure Code, 1908 (in short CPC), the Court is empowered to allow at any stage of the proceedings, either party to alter or amend his pleadings in such manner and on such terms as may be just and all the amendments necessary for determining the real questions in controversy between the parties. The only bar to this power is proviso of Order VI Rule 17 of CPC, which prevents allowing of amendment after the commencement of the trial unless the Court comes to the conclusion that in spite of diligence, the concerned party could not have raised the matter before the commencement of trial.

8- In this case, trial has already begun. Hence, it is necessary to see whether plaintiffs were diligent in raising the matter before commencement of trial or not? Plaintiffs are seeking amendment on the basis of the Court Commission report filed at Exh. 35 along with the map which is filed after closing of their evidence on 13/09/2023. This is apparently a subsequent event. Hence, I am satisfied that plaintiffs could not have raised this matter before commencement of the trial and it cannot be said that they were not diligent in raising the same before the commencement of the trial. So far as nature of amendment is concerned, it is not likely to change the nature of



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the suit. Moreover, as none of the defendants has filed the written statement in this suit. There is no possibility of prejudice to the defence raised by any of the defendants. In conclusion, the application deserves to be allowed. In the result, I pass the following order.

-: :- ORDER -: :-

1. The application at Exh. 44 is allowed.
2. Plaintiffs are permitted to carry out the amendment in the prayer clause of the plaint as prayed.
3. Plaintiffs to carry out the amendment as prayed in this application within 14 days from the date of order and to supply amended copy of the plaint forthwith.
4. Cost in Cause.

(Dictated and Pronounced in the Open Court.)

Date-31/01/2025

(Smt.R.R.Bedagkar)
Jt.Civil Judge Senior Division
Gangakhed