

ORDER BELOW EXH. 19 IN RCS NO.305/2016

1. The present application is filed by the plaintiffs to amendment in the plaint under Order VI Rule 17 of Civil Procedure Code.
2. According to the plaintiffs, the original suit filed by them for removal of encroachment over the suit property. It is further contended that there is already encroachment on area admeasuring 13 R. it is further contended that present defendants are encroaching again over adjacent land. Hence to avoid further complications and to prevent encroachment plaintiffs wanted to restrain defendants by asking injunction against them. It is further contended that for said purpose plaintiffs wanted to add necessary pleading and prayer. Hence they filed present application.
3. Defendant no.1,2,3,7 and 8 opposed present application by filing say below Exh. 22. According to them Defendants wanted to change the nature of the suit. It is further contended that plaintiffs themselves have damaged their property and thereby they are in the preparation to ask false reliefs against defendants. By doing this they wanted to misuse the process of law. On this ground they prayed for the rejection of application.
4. Heard both the sides at length. Perused application, say and pleadings on record. Considering rival contention of both the sides following points arose for my determination and I have record my findings to them for the reasons to follow-

Sr. No	POINTS	FINDINGS
1	Whether proposed amendment will change the nature of the suit ?	In the negative
2	Whether application can be allowed ?	In the affirmative

REASONS

AS TO POINT NO. 1

5. In present application plaintiffs have specifically pleaded that there is encroachment on 13 R area. They admitted that they have no possession of 13 R area but they do not want to loose further land. Defendants have not disputed regarding ownership of plaintiffs over the suit property in their written statement at Exh.17. They are disputing about encroachment only. They are not with the case that plaintiffs are not in possession of the suit property. Hence asking relief to prevent further encroachment is not withdrawal of any factual position. Addition of anything without erasing prior theory can not be change of nature of the suit. Hence the proposed amendment will not change nature of the suit. Hence I am answering point no. 1 int the negative.

AS TO POINT NO. 2

6. In present suit, issues are not framed. Hence application is presented not at delayed stage. Hence it can be entertained as per provisions of O.VI R 17 of the C.P.C. Hence there is nothing remained to reject the application. Hence I am answering point no. 2 in the affirmative and passing following order.

ORDER

1. The application below Exh 19 is hereby allowed.
2. Plaintiffs are directed to carry out ncessary amendment within 14 days from the date of this order.

Date :07/07/2017

(Shri. P. G. Lambe)

3rd Jt. Civil Judge Jr. Division, Daund