



R.C.S. NO.78/2018

Sujata Ghag vs Dhakalaya Shid

CNR NO. MHRG090006462018

**ORDER BELOW EXH.27**  
**(Passed on 08.11.2023)**

This is an application filed by plaintiff under Order VI Rule 17 of Code of Civil procedure for amendment in plaint. Defendant has filed his say and strongly opposed the application.

2. Learned advocate for plaintiff contended that, the suit is filed for removal of encroachment and injunction. It is the contention of the plaintiff that, the plaintiff wants to do amendment in plaint at 4(a) that, as the court commissioner report, it is seen that, defendant has made illegal encroachment by way of constructing of brick cement house of 9.40 X 5.60 sq.ft and total 52.64 sq.metre and adjacent to the house shed 4.0X3.0 total 12.00 square metre and to that effect the court commission report has there at exh.20. Therefore, it is necessary to come before the court this fact of the case. Therefore need to amend the plaint.

3. Further the plaintiff wants the addition of the prayer in the suit in prayer, at AA(1) as the court commissioner report, it is seen that, defendant has made illegal encroachment by way of constructing of brick cement house of 9.40 X 5.60 sq.ft and total 52.64 sq.metre and adjacent to the house shed 4.0X3.0 total 12.00 square metre and to that effect the court commission report has there at Exh.20. Therefore plaintiff is entitled to get the encroached portion of suit property. Therefore, they prayed to allow the application.

4. Ld. Advocate for defendant by filling say on the overleaf of the application that, the report of the court commission is not proper therefore

application need to be rejected.

05. Heard the learned counsel for both the sides. Perused the documents in support to their contentions.

06. Order VI Rule 17 of C.P.C. says that, the Court may at any stage of the proceeding allow any party to alter or amend his pleadings and such amendment shall be necessary for purpose of determining the real question in controversy between the parties. Considering the contentions mentioned in the application it appears that plaintiff is wanted to add contention and prayer as per the report of court commission which is in connection with the suit property only. Therefore, it will be proper to add the said prayer in this suit only. Rejection of amendment application may result in multiplicity of proceedings. On the other hand allowing the amendment application may result into the help to the court to reach at the proper conclusion.

07. In this context I have relied upon ***Revajeetu Builders and Developers V/s Narayanswamy and Sons and ors.***, wherein Hon'ble Apex Court has laid down the following six basic, principles, which ought to be taken into consideration whilst allowing or rejecting an amendment. These principles are as follows :

*“(1) Whether the amendment sought is imperative for proper and effective adjudication of the case?*

*(2) Whether the application for amendment is bonafide or malafide?*

*(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.”*

08. This case law is perfectly applicable to the present facts of this case. Furthermore, as per law all question regarding to same suit property needs to be decided in same suit, if possible. Considering the nature of the suit adding the new contention and prayer is necessary to avoid multiplicity of proceeding. Furthermore, no hardship will be caused to other side as opportunity of being heard will be given to them. Consequently, the application is deserving to be allowed since proposed amendment will not change nature of the suit. Defendants have opportunity to put their defence. They can file consequential written statement. To conclude, I pass following

**ORDER**

01. The application is allowed.
02. Plaintiff shall carry out the proposed amendment mentioned in Para 4A and prayer A(1) of the application within stipulated period.
03. Plaintiff to file fresh amended copy on record.
04. Defendant is at liberty to file consequential written statement, if any.

**Sd/-**

(Smt.M.C.Hasge)

Jt.Civil Judge Junior Division

Roha-Raigad

Date: 08.11.2023.

Place: Roha.

(Note- The validity of signature of presiding officer has been expired therefore judgment uploaded without digital signature.)