

Order below Exh. 116 in R.C.S No.17/2017

(CNR No MHRT08-00001722017)

By the present application, the plaintiff has prayed for leave to amend the plaint. It is contended that, in suit property at sr. no. 8 i.e. land in survey no. 5/2 at village Kondgaon, Tal. Sagnmeshwar, Dist. Ratnagiri, the defendant no. 26 is unauthorizedly carrying construction of a house. Thus, the plaintiff wish to insert and incorporate, in the plaint, contentions in that regard. He is also seeking additional relief of mandatory injunction for destruction of said new construction. Accordingly, the amendment is sought. Noticeably, it is contended that, the construction has started in the month of April 2022 and present application is made on 13/05/2022.

2) The defendants no. 1 and 26 have opposed the application by filing reply below Exh. 122. According to them, in the plaint, the plaintiff did not say anything about any house in survey no. 5/2. Accordingly, the plaintiff cannot amend the plaint to insert the contentions as to alleged additional construction. Hence, present application is false. It is liable to be rejected with cost, according to defendants no. 1 and 26.

3) Perused the record. Heard both sides.

4) Rule 17 of Order VI of the Code of Civil Procedure, 1908, provides for amendment of pleadings. It says that, the Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for determining the real questions in controversy between the parties. The proviso appended to the said provision says that, if the amendment is sought after commencement of trial, it shall not be allowed unless it is shown that, the party seeking the amendment could not ask for the same prior to commencement of trial of the suit, despite of due diligence.

5) In as much as, even the issues are not yet framed, in the present suit, the trial is not yet commenced. Further, according to the plaintiff, the proposed amendment turned necessary due to an event occurred during

pendency of the present proceeding. According to him, the construction is commenced in the month of April 2022. Present application is made on 13/05/2022. Further, while deciding an application for amendment, the Court need not inquire as to the truthfulness of the facts sought to be stated.

6) Learned advocate Smt. Gidye for the defendants has contended that, in an application for temporary injunction made by plaintiff at Exh. 108, the plaintiff has stated that, there was a house in survey no 5/2. The plaintiff has not asked any relief in respect of said house. Thus, the amendment sought in respect of alleged additional construction, cannot be asked for.

7) Suffice it to say in this regard that, while dealing with an application for amendment, the Court shall not carry an inquiry as to whether the relief sought by way of amendment can be granted or not in light of facts of the case. Thus, the contentions raised cannot be accepted at this stage.

8) The amendment is sought prior to commencement of trial in the suit. Moreover, the application is made without delay after the commencement of alleged construction. Further, the amendment sought appears necessary for deciding real controversy between the parties. Thus, application deserves to be allowed. Hence, I pass following order -

ORDER

1. Present application (Exh. 116) is allowed.
2. The plaintiff shall carry the amendment, as permitted, and file the amended plaint and copies thereof on or before next date.

Date : 08.09.2022

(B. D. Tare)
Civil Judge, (Jr. Div.) Deorukh

- : C E R T I F I C A T E : -

Judgment/order in (Order below Exh. 116 in R.C.S No.17/2017)

I affirm that the contents of this Pdf file order are same words as per original order.

Name of Stenographer	:- S. S. Thaware (Jr. Clerk)
Court Name	:- The Court of Civil Judge (J.D.) & Judicial Magistrate F.C., Deorukh
Date of decision	:- 08/09/2022
Order signed by PO. on	:- 08/09/2022
Order uploaded on	:- 08/09/2022