

ORDER BELOW EXH. 37

This is an application for amendment of plaint by the plaintiff under order VI rule 17 of Code of Civil Procedure, 1908 (hereinafter referred as in short 'C.P.C').

2. Perused the application and say at exh. 38 and the record.
3. Heard both sides. They argued as per their application with say respectively.
4. The proposed amendment is in respect of addition of para no. 10 i.e. prayer clause of the plaint. Plaintiff wants to add prayer of mandatory injunction after para no. 10 clause- A. According to plaintiff, defendant no. 1 has completed construction of 'Mangar' over the suit property. The photos filed on the record by defendants vide list at exh. 24 shows the same fact.
5. In this regard, I want to quote proviso of O. VI, R 17 of C.P.C. which runs as under -

'Provided that to application for amendment shall be allowed after the trial has commenced, unless the courts comes to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of trial'.

6. Proviso to O. VI R. 17 itself clears the position that, if proposed amendment is sought after commencement of trial, then question of due diligence arises. In the case at hand, trial is not commenced yet. Proposed amendment is sought by plaintiff before filing of affidavit of evidence-in-lieu of examination i.e. before commencement of trial. Hence, question of due diligence does not come into existence.
7. In this regard, profitable reliance can be kept on **Rajkumar Gurawara Vs M/s S.K.Sarawagi reported in AIR 2008 SC 2303**, in which Hon'ble Supreme Court held that, pre-trial amendments are to be allowed liberally than those sought to be made after commencement of trial.
8. The proposed amendment prima-facie appears to be technical. It will not certainly change the nature of the suit. Thereby no prejudice will be caused to the defendants. Proposed amendment is necessary for the purpose of determining the real question in controversy between the parties.

9. In view of above discussion, the application succeeds and deserves to be allowed in terms of following order.

ORDER

1. The application (Exh.37) is allowed.
2. The plaintiffs are directed to carry out necessary amendments forthwith and supply the copies of amended plaint to the court and defendants within next 14 days from today.
3. Parties to note.

Sd/-

Vengurla.

Date : 05/02/2022.

(K.K.Patil)

Civil Judge, Jr.Dn., Vengurla.