

ORDER BELOW EXH.30 IN R.C.S. 178/2015

(Hindurav Patil etc. Vs. Jagannath Patil etc.)

(CNR : MHSN05-000898-2015)

1. This is an application for amendment of plaint. By the present application plaintiff has prayed for amendment in plaint as per the report of T.I.L.R. to add 12 Ares area as encroached portion replacing 11 Ares.
2. Suit is proceeded without W.S. against defendants.
3. Perused record. Heard R. A. Mohite, learned advocate for plaintiffs.
4. As per Order 6 Rule 17 of Civil Procedure Code,1908, application for amendment can be filed at any stage. Rider which is imposed in the proviso is applicable if application for amendment is filed after trial begins. As per the proviso appended to rule 17 of order 6, *no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.* In the case in hand suit is instituted claiming relief of Injunction and also for measurement of property.
5. While considering the application for amendment Court has to see two stages i.e. Pre trial amendment and post trial amendment. It is well settled principle that pre trial amendment has to be liberally construed. In the present case issue are yet to be framed and hence the stage is pre-trial. According to plaintiff the TILR report Exh.27 clearly shows the encroachment at the hands of defendants and as per the said report

plaintiff is seeking amendment. No doubt the TILR report is required to be proved as per law. However at the time of decision of amendment application merits of the suit cannot be considered. Prima facie, as per the TILR report 12 Ares area as encroachment is seen. Considering the aforesaid nature of amendment according to me this being a suit for Mandatory injunction in the form of removal of encroachment, the same needs to be liberally viewed to scuttle the multiplicity of litigation and to decide the dispute in one suit. Merely because a relief is added does not mean the nature of suit changes. By allowing application nature of suit does not change nor any harm or prejudice will cause to the defendant as they failed to contest the suit. As the said encroachment revealed during TILR report plaintiff cannot be said to be at fault and therefore costs is not required to be imposed upon him. Considering the nature of amendment, I hold that application deserves to to be allowed for which I pass following order :

ORDER

- i. Application is allowed.
- ii. Plaintiff to carry out necessary amendments within 14 days from today and file amended plaint.
- iii. If the Plaintiff fails to carry out aforesaid amendment and file amended Plaint within aforesaid time his right to carry out amendment shall stand forfeited.

Dated : 06.01.2020

(Kailas K. Kurandale)

6thJt.Civil Judge (J.D.), Islampur.

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

I affirm that the contents of this P.D.F. file Order are same word to word, as per the original Order.

Name of Stenographer :- J. S. Ghabak.(Steno Grade-3)

Court Name :- Shri. K.K.Kurandale,
6th Jt. Civil Judge (J.D.) and
J.M.F.C., Islampur

Date of decision :- 06.01.2020

Order signed by PO. on :- 06.01.2020

Order uploaded on :- 06.01.2020