

**ORDER BELOW EXH. 35 IN R.C.S.No.159/2015**

1- The plaintiff has filed present application for amendment under order 6 rule 17 of Code of Civil Procedure. It is the contention of plaintiff that during pendency of the suit defendants have erected construction over the suit property hence, it is become necessary to amend the pleadings and relief accordingly. Hence, the present application.

2- Defendants resisted the application on the ground that they have preferred an appeal against the order passed below Exh.5. Initially, plaintiff has filed suit for perpetual injunction and accordingly defendants have submitted their written statement. Further application of the plaintiff for appointment of commission is pending. Hence, present application is not tenable. Further application is not preferred within time. Hence, prayed for rejection of application.

3- Heard both parties. After perusal of the same, it appears that defendants are not denying the fact of construction as alleged by the plaintiff. Further defendants have never denied the fact that construction took place subsequent to filing the suit. Hence, it appears that facts alleged by the plaintiff in the present application took place

subsequent to the suit. Any development in respect of suit property subsequent to filing the suit should come on record to adjudicate the matter. Therefore, present proposed amendment regarding pleadings in respect of construction over the suit property during pendency of suit, relief and valuation are necessary to adjudicate the matter. Hence, the application deserves to be allowed. In the result, I proceed to pass following order.

**ORDER**

1. The application Exh. 35 is allowed.
2. The plaintiff is permitted to carryout necessary amendment as proposed.

Date : 28/08/2019

Kvathe-Mahankal.

[S.A.Kulkarni]  
Jt. Civil Judge (J.D.),  
Kvathe-Mahankal.