

ORDER BELOW EXH. 25 IN
REGULAR CIVIL SUIT NO. 18/2016
CNR-MHSN12-000059-2016
DADU MOHITE VS. SHOUKAT LOHAR
(PASSED ON 12.12.2019)

This is an application filed by the plaintiff for amendment of plaint.

2. According to plaintiff, he has instituted suit for recovery of possession to the extent of 4 R land encroached by the defendant. The plaintiff has produced the measurement map by which the boundaries of Gat No. 391 were fixed. The plaintiff had applied for the appointment of Court Commissioner for the purpose of measurement. Accordingly on 22.05.2018 the TILR has measured the land Gat No. 391 and submitted its report. It is found during measurement that the defendant has encroached 6 R land. Therefore, the plaintiff is willing to mention an area of encroached land as 6 R land. He also willing to amend the prayer clause claiming recovery of 6 R land.

3. The defendant has filed his say. The defendant has objected for grant of application. According to defendant, the plaintiff has intentionally filed the present application. If the proposed amendment is allowed it will change the area of land as claimed by the plaintiff. The defendant has prayed for rejection of application.

4. It is argued by learned advocate Shri. Gaikwad for the plaintiff that, while instituting the suit the plaintiff has shown 4 R land as encroached land. He had measured his land prior to

institution of suit. In the measurement the TILR has only fixed the boundaries but has not shown the area of encroachment. Therefore, during pendency of suit the plaintiff has applied for appointment of Court Commissioner. On 22.05.2018 the Court Commissioner has carried out measurement. In the said measurement it is found that the defendant has encroached 6 R land. It is further argued that by the proposed amendment the nature of suit will not be changed. The learned advocate has prayed for the grant of application.

5. It is argued by learned advocate Shri. Mulani for the defendant that the defendant has not encroached the land of plaintiff as alleged by him. Still it is not proved by the plaintiff that the defendant has encroached the land. If the proposed amendment is allowed then there will be change in the area of alleged encroached land. Therefore according to him, if the proposed amendment is allowed it will change the nature of suit. He has prayed for the rejection of the application.

6. In view of Order VI Rule 17 of Code of Civil Procedure the Court may at any stage of the proceeding allow either party to amend the pleading. The amendment shall not be allowed after the commencement of trial unless the concerned party shows that despite of due diligence he failed to raise the matter earlier.

7. It appears that, the plaintiff has instituted suit for recovery of 4 R land. The trial of suit is not still commenced. It also appears that vide Exh. 18 the TILR was appointed as Court Commissioner for the purpose of fixation of boundaries and for ascertaining encroachment if any. Accordingly, after measurement

the TILR has submitted its report below Exh. 23. On perusal of map it can be seen that, the area of encroachment is shown as 6 R land. The said area is ascertained by Court Commissioner during pendency of the suit. There is no hurdle in permitting plaintiff to show area of encroachment as 6 R land in the place of 4 R land. The proposed amendment will not change the nature of suit because after allowing this application also the suit remains for the recovery of possession. So also the trial of suit is yet to commence. Therefore, the application is deserves to be allowed. Hence, I proceed to pass following order.

ORDER

1. Application (Exh. 25) is allowed.
2. The plaintiff is directed to carry out necessary amendment on or before next date and to file fresh copy of the plaint.

Palus

Date :- 12.12.2019.

Civil Judge Junior Division,
Palus