

Order passed below Ex.33 in R.C.S. No.223/2017

(CNR NO. MHSO06-002272-2017)

I.A.No.1/2019

1. This is an application for amendment by the plaintiffs.
2. Perused the application and say on it. Heard learned advocates for the parties.
3. It is submitted by the application that the plaintiffs have filed this suit for perpetual injunction. The plaintiffs have submitted that defendants are trying to encroach on the suit property. The court commissioner was appointed in the matter. The commission report is filed after measurement. Defendants have encroached as per said report. Hence, now this amendment is brought to add the relief of possession of encroached area from defendants as per commission report.
4. The application is challenged on the ground that it is false and not maintainable. It is submitted that application is filed at belated stage. The amendment is not legal and proper. If allowed heavy cost be granted. It is submitted vide Exh.38 that the measurement itself is illegal and false. The encroachment is alleged to be existing since prior to the institution of the suit. Therefore, now no new event has happened. Therefore, application is not maintainable.
5. Considering above contentions, following points arise for determination and findings are recorded thereon for reasons to follow.

<u>Sr.No.</u>	<u>Points</u>	<u>Findings</u>
1.	Whether application should be allowed, as prayed ?	<u>Yes.</u>
2.	What order ?	<u>Application is allowed.</u>

REASONS

As to points Nos. 1 & 2 :-

6. The plaintiffs have filed present suit for perpetual injunction. But, there are also pleadings in the plaint that there is boundary dispute and defendants encroached over the suit property. Even before institution of suit measurement was carried out. But, in said measurement encroachment was not shown by measurer intentionally. Therefore, it is the clear case in the suit that since the beginning that defendants have encroached over the suit property. Therefore, by claiming the recovery of possession of encroached area, the plaintiffs are further substantiating their original case.

7. In this matter trial has not commenced. Even evidence is not adduced by the parties. The defendants have right to carry out the constitutional amendment. The necessity of amendment has arose due to commission report which is filed on the record after institution of suit. The commissioner report admittedly shows that defendants have encroached over the suit property. The commission is carried out as per order of court and by a public servant. Hence, prima facie in view of said report this application is filed. Therefore, the application is required due to subsequent event of measurement which is ordered by court itself. Hence, prima facie the amendment is necessary.

8. It is settled law that at the stage of amendment, the merits in the amendment application should not be tested as true or false. At this stage whether measurement is legal or not cannot be determine finally and conclusively. Hence, prima facie considering the report in view of commission order by court, the amendment is necessary. Hence, same should be allowed to be carried out. The amendment is necessary to avoid multiplicity of proceedings and to determine the controversy between the

parties finally. Therefore, following order is passed.

ORDER

1. The application exh.33 is allowed subject to cost of Rs.3,00/-.
2. The plaintiffs shall carry out amendment till next date in the plaint and shall file amended copies of plaint.
3. The plaintiffs shall pay cost to defendants.

Date: 29.07.2019.

(M. R. Jadhav)
Jt. Civil Judge, S.D.,
Pandharpur.

CERTIFICATE

I affirm that, the contents of this PDF file order are same word to word, as per the original order.

<i>Name of Stenographer</i>	:	<i>A.K. Vibhute</i>
<i>Court</i>	:	<i>Jt. Civil Judge Senior Division Pandharpur</i>
<i>Date</i>	:	<i>29.07.2019.</i>
<i>Order signed by the Presiding Officer on</i>	:	<i>29.07.2019.</i>
<i>Order uploaded on</i>	:	<i>30.07.2019.</i>