

**ORDER BELOW EXHIBIT NO.25**  
**(Dated 29/04/2019)**

By this application plaintiff have sought permission to amend the plaint under Order 6, Rule 17 of the Code of Civil Procedure, 1908 (hereinafter referred as 'Code'). It is submitted that, plaintiff has instituted present suit for permanent injunction. Plaintiff submitted that while drafting the plaint in plaint para no. 1 by a typographical mistake the description of the property mentioned in plaint para no. 1-A is shown as suit property. Now, present plaintiff is intended to amend his plaint for removal of the above mentioned typographical mistake. Plaintiff intended to struck out plaint para no. 1A and also intended to amend his plaint by correcting plaint para no. 1-B to 1-A.

2. Defendant has resisted the application by filing his say on the overleaf of said application. Present defendant contended that the proposed amendment is not a typographical mistake. By the proposed amendment the nature of present suit will be changed. Present defendant have filed his written say and complied his argument on application below exhibit no. 5. Therefore, at this stage, present application be rejected.

3. Having heard learned advocate for the Plaintiffs and the defendants, following points arise for the determination. Findings thereon are recorded with reasons stated thereunder.

<u>SR.NO.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether the proposed amendment can be allowed?	Yes
2.	What order ?	Application is allowed.

**REASONS**

4. Order 6 Rule 17 of the Code reads as under.

“Amendment of pleadings :- The court may at any stage of the proceeding allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining their real questions in controversy between the parties.;

Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of trial.”

5. This suit has been instituted on 04-04-2019. The defendant is appeared on 15/04/2019. On 24-04-2019 below exhibit no. 18 defendant filed his say to the interim application. Yet the defendants have not filed their written statement. In such a circumstances it can not be said that the party could not have applied for amendment earlier in spite of due diligence.

6. It is well settled law that leave to amend will be granted if the proposed amendment is necessary for the decision of real controversy between the parties and will not work injustice on the other side. Leave to amend will be refused, if the proposed amendment is not necessary for the decision of suit on merit or if it will work injustice on the other side and if it will take away any right accrued in favour of the other side. Proposed amendment can be refused if it is malafidely sought. It can be refused if it changes the nature of the

suit or defence.

7. In regards to this application plaintiff submitted that the amendment is the consequence of typographical mistake. Moreover, plaintiff contended that in the plaint itself plaintiffs have admitted that the land bearing gat no. 709 situated at Karkamb is owned and possessed by the defendant. The said typographical mistake is required to be corrected. Thus, this amendment will not change the nature of the suit. Thus, this amendment is explanatory in nature. If the proposed amendment is allowed the nature of suit or defence will not change.

8. It is well settled law that proposed amendment can not be denied only on the ground of delay if it is necessary to decide the real controversy between the parties. In present matter today defendants have argued the application below exhibit no. 5. Learned advocate for the plaintiff submitted that he is ready to argue the application below exhibit no. 5 soon after present amendment. It is to be noted that no right accrued to the defendant is taken away. It is not necessary to consider the merit of proposed amendment. Defendant can challenge it. It is for the plaintiff to prove the contents of proposed amendment during the trial.

9. Considering the delay & nature of proposed amendment while allowing this application cost of Rs.200/- ( Rs. Two hundred) will have to be imposed on the plaintiff. This order will meet the ends of justice. Hence, point No.1 is answered in the affirmative and in answer to point No.2 following order is passed.

**ORDER**

- 1) Application below exhibit no. 25 is allowed subject to cost of Rs.200/- (rupees Two hundred)
- 2) Plaintiff do pay the cost of Rs.200/- ( rupees two hundred) to the defendant or deposit it in the Court and carry out the proposed amendment on or before next date.
- 3) Plaintiff do supply amended plaint with copy thereof on or before next date.

Sd/-

(D.U.Rajput)

Date: 29/04/2019.

3<sup>rd</sup> Jt. Civil Judge (J.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>:Sadafule M.P.(L.G.)</i>
<i>Court</i>	<i>:3<sup>rd</sup> Jt. Civil Judge Jr. Divn. Pandharpur.</i>
<i>Order signed by the P.O. on</i>	<i>:29.04.2019.</i>
<i>Order uploaded on</i>	<i>:29.04.2019.</i>