

Regular Civil Suit Number 378/2013
CNR Number MHSO-07-0006472013

Pramila Bharat Pawar Plaintiff

Versus

Shashikant Dnyaneshwar Potdar Defendant

ORDER BELOW EXHIBIT 47

1. The suit is for perpetual injunction. The plaintiff has described suit property in paragraph number 1 of suit. The plaintiff has filed the application vide exhibit 47 to do amendment in pleading in the suit. The plaintiff has stated that, Mr. V. N. Kulkarni is appointed as Court Commissioner as per order passed below exhibit 28. He has submitted report vide exhibit 38 and stated about position of suit property. The plaintiff has stated in the plaint that, the defendant has constructed septic tank and stair case adjoining to the compound wall of plaintiff. The defendant has done construction illegally and against the rule of town planning. Therefore, amendment is necessary in view of court commission report vide exhibit 38. It will not change nature of suit. Hence, it is necessary to do amendment as per application vide exhibit 47. The court has called the say of opposite side on application vide exhibit 47. The defendant has filed written statement and counter claim vide exhibit 20. The defendant raised strong objection during argument. Hence, application is to be rejected.

2. I have perused application vide exhibit 47 filed by plaintiff.

3. Upon hearing of both sides and on perusal of exhibit 47 and the following points arise for my consideration.

Sr. No.	Points	Findings
1.	Whether proposed amendment will change nature of suit ?	No
2.	Whether proposed amendment is necessary to decide real dispute between parties ?	Yes
3.	Is Plaintiff entitled for relief of amendment ?	Yes
4.	What is Order ?	The application is allowed.

REASONS

As to point number 1 to 4

4. The point number 1 to 3 are interconnected with each other. Hence, they are clubbed together. The plaintiff has filed the application vide exhibit 47 and stated that, Mr. V. M. Kulkarni is appointed as Court Commissioner as per order passed below exhibit 28. He has submitted report vide exhibit 38 and stated about position of suit property. The plaintiff has stated in the plaint that, the defendant has constructed septic tank and stair case adjoining to the compound wall of plaintiff during pendency of this suit. The defendant has done construction during pendency of this suit illegally and against the rule of town planning. Therefore, amendment is necessary in view of court commission report vide exhibit 38. Proposed amendment will not change nature of suit.

5. This is suit for perpetual injunction. The plaintiff has stated that, Mr. V. M. Kulkarni is appointed as Court Commissioner as per order passed below exhibit 28. He has submitted report vide exhibit 38 and stated about position of suit property. The plaintiff has

stated in the plaint that, the defendant has constructed septic tank and stair case adjoining to the compound wall of plaintiff during pendency of suit. The defendant has done construction during pendency of suit illegally and against the rule of town planning. Therefore, amendment is necessary in view of court commission report vide exhibit 38. In order to enable the court to adjudicate effectively, completely, to settle all the questions involved in the suit, and in the interest of justice, it is necessary to allow the application vide exhibit 47. The application vide exhibit 47 is filed under the provision of order 6 rule 17 of Code of Civil Procedure.

6. The amendment is necessary to decide real dispute in the parties. In view of court, the nature of proposed amendment is not causing any change in the nature of claim of suit. It will not damage or change the nature of suit, rather the amendment will sort out the dispute between parties. It seems that the proposed amendment is bona fide one. The proposed amendment is necessary for the purpose of determining the real questions in controversy between the parties. If the application vide exhibit 47 is rejected then it may result in multiplicity of litigation. In order to avoid multiplicity of proceeding, it will be appropriate to allow the said application. The proposed amendment will help the court to adjudicate the dispute on its merit. The defendant will get the opportunity to put forth their defence. Therefore, the application is allowed. In the result, the following order is passed.

ORDER

1. The application vide exhibit 47 is allowed.
2. The Plaintiff shall carry out amendment on or before next date.

3. The suit shall be amended accordingly on or before next date by plaintiff and copy of amended plaint is to be filed on or before next date. The suit shall proceed further in accordance with provisions of law.
4. The plaintiff is to deposit appropriate court fee.

Date – 04-12-2025

Smt. K. A. Katkar
3 rd Joint C. J. J. D. Pandharpur.

