

**ORDER BELOW EXH.54**

This is application under Order VI, Rule 17 of CPC for amendment in plaint.

2. In short it is application that, the plaintiff has submitted suit for fixation of boundaries by Taluka Inspector of Land Records. Towards northern side of suit property, land of defendant No. 1 to 3 was situated. Defendant No. 1 to 3 for family arrangement recorded name of defendant No. 3 on the property, which is situated towards northern side of suit property. But, defendant No. 1 to 5 and Uttam Maruti Mundfane sold their property to proposed defendant by registered sale deed on 29.06.2016. Proposed defendants from the date of sale deed are obstructing possession of plaintiff. The suit is for fixation of boundaries. Therefore, adjacent land owners are necessary and proper parties. Furthermore, they are obstructing possession of plaintiff. Hence, proposed defendants be added and relief of perpetual injunction is required to be added in the plaint along with relating contents of obstruction. Therefore, application be allowed.
3. Against the application, proposed defendants have submitted their say below Exh.60 that the plaintiff has encroached over land of defendant No. 1 to 3. Therefore, R.C.S. No. 2/2002 is

pending. Now, it is R.C.S. No. 39/2019. The TILR measured the property vide M.R. No. 550. From measurement it is crystal clear that the plaintiff has committed encroachment over land of defendant. In R.C.S. No. 39/2019 proposed defendants are added as plaintiffs. Proposed defendants have purchased the property, therefore, they are in actual possession over their purchased property. Hence, there is no necessity to add proposed defendants and to allow present application. Hence, application be rejected.

4. I have heard learned advocates of both sides.
5. Admittedly, proposed defendants are purchasers of property of defendant No. 1 to 3. As per the application, towards northern side of suit property, land of proposed defendants is situated. The suit is for fixation of boundaries. Therefore, adjacent land owners are necessary and proper parties. Even though proposed defendants are added as plaintiffs in their suit bearing R.C.S. No. 39/2019 that does not mean that present plaintiffs are restrained to implement proposed defendants as defendants in the suit. It is contention of plaintiff that proposed defendants obstructed possession of plaintiff. That is matter of evidence. At this stage it is not necessary to make comment on it. For just decision of suit and for execution of decree, presence of proposed defendants is necessary, by which no prejudice will be caused to them. On the other hand, as this Court is a fact

findings court, real facts will be brought on record. Hence, in the result I pass the following order :-

**ORDER**

1. The application is allowed.
2. Plaintiff shall carry out amendment accordingly.
3. No order as to costs.

Place - Malshiras.  
Date - 06/01/2023.

( **U. V. Joshi** )  
Civil Judge Senior Division,  
Malshiras.