

**Order Below Ex. 25 in RCS No. 1144 / 2020**

(Eknath Vs. Vijay)

This is an application filed by the plaintiff under Order VI Rule 17 of the Code of Civil Procedure for carrying amendment in plaint in respect of the Court Commissioner report and for removal of encroachment as mentioned in the Court Commissioner report and for its possession. The plaintiff has also sought to add the prayer of declaration that he is the owner of the encroached area.

2. The other side i.e. defendant has objected the application vide reply Exh.24 on the ground that the application is not tenable. If the application is allowed, it will change the nature of suit, as the suit is filed for measurement of the suit land only. Hence, it be rejected.

3. Heard both sides. Perused the record. It appears that the Court Commissioner was appointed vide order below Exh.11 and accordingly, the Court Commissioner has submitted his report. It is contention of plaintiff that as per Court Commissioner report, the land of plaintiff having area 1 H 48 R land is found to be in possession of defendant. Therefore, the plaintiff has sought removal of encroachment and for its possession. It is true that the suit is only filed for fixation of boundaries and for measurement of the suit property by TILR. However, it is also prayer in the suit that if it is found after fixation of boundaries that the defendant is in possession of area of plaintiff, then its possession be handed over to the plaintiff. Under these circumstances, it appears that the proposed amendment is appears to

be of consequential in nature and as already the agreed map has come on record, if the application is allowed, it will not change the nature of the suit.

4. As regards, the prayer of plaintiff to declare them as the owner of the encroached area is concerned, on perusing the written statement filed by defendant, it appears that defendant has also filed counter claim that he is the owner of the suit property / encroached area. Under these circumstances, if the prayer of amendment for claiming declaration is allowed, it will not change the nature of the suit and it will avoid the multiplicity of proceedings. Under these circumstances, the application needs to be allowed in the interest of justice. However, it appears that the report of Court Commissioner is filed on 17/07/2023 and this application is filed on 18/12/2023 i.e. after a period of 5 months. No any reason for such delay is mentioned by the plaintiff. Hence, to check delay, some costs needs to be imposed. Hence, application is allowed on the costs of Rs.500/-.

5. Payment of costs is condition precedent.

6. Plaintiff is directed to carry necessary amendment on or **before 10/01/2025** (as from 24/12/2024 to 31/12/2024 there is Winter Vacation) and shall file amended copy of plaint on record.

Date:18/12/2024

(G. V. Gandhe)  
2<sup>nd</sup> Jt. Civil Judge, Jr. Division  
Madha.  
(J.O. Code- MH02624)

## **CERTIFICATE**

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

Name of Stenographer : A. A. Jadhav (Grade-3)

Court Name : Shri. G. V. Gandhe, 2<sup>nd</sup> Jt. C.J.J.D.  
and J.M.F.C., Madha.

Order signed by P.O. : 18/12/2024

Order uploaded on : 19/12/2024