

Regular Civil Suit No. 167/ 2011

(CNR- MHST07-0011522011)

ORDER BELOW EXH. 89

1) Plaintiff has filed an amendment application under Order VI Rule 17 of the Code of Civil Procedure. Plaintiff has submitted that, that defendant no. 5, defendant no. 6A, 6B, 6C and 12 have made encroachment in the suit property and made illegal construction therein before one year. Plaintiff has further submitted that, in order to have correct description of encroachment, contents relating to measurement of encroachment are required to be made in the plaint and relief to that effect is required to be asked, therefore, proposed amendment to that effect, may be allowed in the interest of natural justice.

2) On the other hand, defendants have filed their say below Exh. 93. Defendants have submitted that, the present application is not maintainable in the eyes of law. The defendants have further submitted that, the present plaintiff had already sought such relief below Exh. 47 in the year 2014, therefore, same application, on the same ground, can not sustain in the eyes of law. Defendants have further submitted that, proposed amendment should have been done at the time of filling of suit. Defendants have further submitted that, proposed amendment is barred by law of limitation and Order 2 Rule 2 of Code of Civil Procedure. Therefore, under these circumstances the present application may be rejected.

3) Heard both side. I must mention here that, present suit is for declaration and recovery of possession. It is settled position law that court should be liberal in granting amendments.

4) In view of above legal possession, while considering contention raised by the defendants, I mention here that, proposed amendment is nothing but the detailing of the measurement of an encroachment and same was not sought by the plaintiff, in the earlier application filed below Exh. 47. It is needless to mention here that, if proposed amendment is allowed, nature of suit would not be changed. The proposed amendment is not new amendment as such therefore, there is no question of bar of law of limitation and order 2 Rule 2 of Code of Civil Procedure.

5) It is indeed that there is delay in bringing proposed amendment and it caused hardship to the defendants. In my opinion, hardship caused to the defendants can be compensated by imposing reasonable cost on the plaintiff. Thus, proposed amendment is required to be allowed in order to decide the suit on merit. Hence, I proceed to pass following order :-

ORDER

- 1} Application is allowed subject to cost of Rs. 2000/-
- 2} Cost be given to contested defendants.
- 3} Plaintiff is directed to carry out necessary amendment within statutory period and file amended copy of the same.

Karad

(S.M. Sarode)

Date :- 26/07/2021

3rd Jt.Civil Judge Junior Division,
Karad