

ORDER BELOW EXH.96 IN [R.C.S.NO. 167/2011](#)
(CNR-MHST- 070011522011)

Plaintiff has filed an application under Order VI Rule 17 of the Code of Civil Procedure. Learned advocate to plaintiff has submitted that, legal heirs of defendant no. 6, during pendency of suit, made encroachment in the suit property and thereby constructed in the suit property by taking illegal permission of Municipal Council. Therefore, contents regarding illegal encroachment and illegal permission are required to be added in the plaint and incidental relief to that, effect is required to be asked. Learned advocate of plaintiff has submitted that, if proposed amendment is allowed, nature of suit would not be changed. Therefore, present application may be allowed in the interest of the justice.

2. On the other hand, defendants have filed their reply below Exh. 100 stating that, the contention regarding permission of construction by the planing authority can not raise in the present suit as it is expressly barred. Learned advocate of defendants has further submitted that, proposed amendment is nothing but it is an attempt to prolong the matter. Therefore, present application may be rejected.

3. Heard both sides. It is required to note here that present suit is for declaration and recovery of possession. The proposed amendment is

appeared to be subsequent development after filing of the suit. Thus, it is required to be allowed. Moreover, if proposed amendment is allowed, nature of suit will not be changed and no prejudice would be caused to the defendants. Thus, present application is required to be allowed. Hence, I proceed to pass following order.

ORDER

1. Application is allowed.
2. Plaintiff is directed to carry out necessary amendment in the
 plaint.
3. Plaintiff is directed to file an amended copy of plaint on
 record.

Date: 07/03/2022

(S. M. Sarode)
3rd Civil Judge Junior Division,
Karad.