

**R.C.S. No.99/2021
Sandesh & Ors.Vs.
Vinayak**

ORDER BELOW EXH.45

Read an application. No reply filed by the defendant. Perused the record. Heard the learned counsel for both the parties.

2. The plaintiff filed this instant application under order VI, rule 17 of the Code of Civil Procedure and submitted that the plaintiff filed this suit against defendant for mandatory injunction. On 06.05.2021, the order has been passed upon the temporary injunction application and the defendant is restrained from doing further construction work in C.S. No.259 and in a lane which is towards eastern side of the C.S. No.259 till he appears and file his say. However, after passing the order dated 06.05.2021, the defendant infringed the said order and the construction of the defendant is continuously going on. The plaintiff filed the Contempt Petition bearing No. 127/2022 against the defendant and the said petition is pending in the Court. Now, the plaintiff want to add para No.4B in the plaint that , the defendant infringed the order dated 06.05.2021 and he continuously doing construction work. The construction of the defendant is illegal.

3. The plaintiff also want to add after para 9 of the plaint that, it shall be directed to the defendant to remove encroachment and to give possession to the plaintiff.

4. The defendant filed the written statement at Exh. 26. The temporary injunction application is not decided till today. The issues have not been framed till today. The trial of the suit is not commenced. The plaintiff is not claiming any other relief except the mandatory injunction. The plaintiff is claiming the removal of encroached land and its possession. Therefore, the nature of the suit will not be changed, if the application is allowed. No prejudice will be caused to the defendant. The plaintiff filed this amendment application before the commencement of trial. Therefore, it is necessary to allow plaintiff to make amendment in the plaint. I found substance in the application. Accordingly, I proceed to pass the following order.

ORDER

- 1) The application is allowed.
- 2) The plaintiff is permitted to make amendment in the plaint as claimed.
- 3) The plaintiff is further directed to file amended copy of plaint till next date.
- 4) Both the parties are directed to take note of it.

Vaduj
Date: 06.12.2022

(D.D. Fulzele)
Civil Judge Sr.Dn., Vaduj