

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

ORDER BELOW EXH.63

Read an application and the reply filed by defendant at Exh. 68. Perused the reczord. Heard the learned counsel for plaintiffs Adv. Shri. S.S. satbhai and the learned counsel for defendant Adv. Smt. S.S. Kamble holding for Adv. Shri. P.K. Barsawade.

2. The plaintiff filed this instant application and submitted that plaintiffs filed the suit against the defendants for removal of encroachment and perpetual injunction. Defendants filed written statement at Exh. 26. Thereafter, on previous date i.e. 03.05.2021 the plaintiff filed one application at Exh. 7 to issue commission vide Order-XXVI, Rule-9 and the same application is allowed and thereafter the deputy superintendent of land record office was appointed as court commissioner and it was directed to court commissioner to measure the land and house property of the plaintiffs and defendant and to make the local investigation of the said property and thereafter file the report in the court. As per order below Exh.7, the deputy superintendent of land record measure the land, make the local investigation and file the report on record on 02.05.2023.

According to plaintiffs, as well as the report of Court Commissioner, there is encroachment of 46 sq. meter in the suit property which is caused by the defendants. Therefore, plaintiffs moved the instant application to make an amendment in the plaint that on 09.02.2023 the court commissioner measured the suit

property and found that there is an encroachment of 46 sq.mt in the City Survey No. 259 made on the part of defendants. The plaintiffs want to add para 4c after para 4b that the defendant made encroachment in the suit property. The defendant infringed the order of the court and erected the RCC column upon the suit property and committed contempt of court orders. The plaintiffs want to add para no. 9b after para 9a that the defendant no. 1 illegally encroached upon 46 sq. meter land. Therefore, the plaintiffs prayed to allow an amendment application.

On the contrary, the defendant filed reply at Exh. 68 and opposed to this application on the ground that the plaintiffs can not make amendment in the plaint on the presumption that the court commissioner find out that there is encroachment on the part of defendants and thereafter prayed for rejection of the application.

3. On perusal of record it appears that plaintiff filed this amendment application before the commencement of trial. The injunction application has not been decided till today. On previous date i.e. on 27.04.2022, the plaintiff moved an application under Order-VI, Rule-17 of the Code of Civil Procedure to make an amendment in the plaint and the same application is allowed. Thereafter, on 29.11.2022 the plaintiff moved another application to make amendment in the plaint at Exh. 45 and the same application is also allowed. This is the third application of the plaintiff to make amendment in the plaint.

4. I read order VI, Rule 17 of the Code of Civil Procedure. Rule 17 of Order VI of the Code of Civil Procedure provides that the Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such

terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court come to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

5. In this present suit, admittedly, plaintiff moved an application to make amendment in the plaint before the commencement of trial. The suit is pertaining to encroachment. The plaintiff want to make amendment in the plaint in respect of area. The real dispute between the parties are regarding the encroachment. Therefore, it is necessary to allow plaintiffs to make amendment in the plaint as prayed. I found substance in the application. However, plaintiffs are liable to compensate to defendants. Accordingly, I proceed to pass the following order,

ORDER

1. Application is allowed.
2. Plaintiffs are permitted to make amendment in the plaint as claimed subject to cost of Rs. 500/- payable by the plaintiffs to defendants till next date.
3. Plaintiffs are further directed to file amendment copy of the plaint after its incorporation of the plaint.
4. Both the parties are directed to take note of it.

Vaduj
Date:13.06.2023

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