


MH170015252015 	<u>REGULAR CIVIL SUIT NO.171/2015</u> Chandrakant Baburao Patil & anr. vs. Asif Iqbal Dhanani & ors.
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ORDER BELOW EXH.264

By way of this application filed under Order VI Rule 17 of the Code of Civil Procedure, defendants/counter claimant have sought permission to amend the counter claim filed at Exh.30. It is stated that, in counter claim defendants/counter claimant have sought injunction restraining original plaintiffs from causing obstructions to use of road passing from survey no.827/5 through which counter claimant have access to their property from survey no.827/8. It is stated that by way of this amendment, counter claimant wants to seek declaration that they have right to use that road and further they wants to annex map showing the exact road in respect of which they are seeking the relief. It is stated that proposed amendment will not change nature of suit or counter claim but, same is necessary to decide on merit. Hence, this application.

2] Learned advocate for original plaintiffs filed his say and strongly opposed to allow this application stating that counter claimant has sought mandatory injunction to remove fencing/compound wall put up by original plaintiffs at Northern side of survey no.827/5 but, already application for interim injunction moved by present defendants was rejected by Trial Court, District Court and the Hon'ble High Court. Tahsildar Palghar has also made observations that there is no Northern side road passing from suit property i.e. survey no.827/5 and same observations has been made by Tahsildar while passing order under section 143 of the Maharashtra Land Revenue Code. Counter claimant has

moved this application at belated stage and matter is fixed for final argument. Hence, prayed for rejection of application.

3] Considering rival contention of both parties following points arose for my determination and I have recorded my findings thereon along with detailed reasons to follow -

SR. NO.	POINTS	FINDINGS
1)	Whether proposed amendment is necessary to decide the counter claim on merit ?	In the affirmative.
2)	Whether application for amendment deserves to be allowed?	In the affirmative.
3)	What order?	As per final order.

REASONS

AS TO POINT NOS.1 AND 2 :-

4] Heard, learned advocate for both parties at length and gone through records. Learned advocate for plaintiff drew my attention to provisions of Order VI Rule 17 of the Code of Civil Procedure for ready reference. Order VI Rule 17 quoted below -

“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 comes to conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

Relying on proviso, he argued that, defendants/counter claimant has not shown due diligence in moving this application. Matter is fixed for final

argument. Hence, prayed for rejection of application. First part of the section shows that application can be allowed at any stage of trial if amendment is necessary for the purpose of determining the real question in controversy between the parties however second part has put certain restrictions in allowing the application.

5] In the case at hand, real question to be decided in counter claim is whether road is passing from survey no.827/5 and whether counter claimant are entitled to use that road to approach their property from survey no.827/8. Learned advocate for plaintiffs drew my attention to the observations of the Hon'ble District Court and the Hon'ble High Court, in order passed on injunction application, filed by both parties in this matter. It is true in that, orders from Trial court to the Hon'ble High Court, it is observed that prima facie defendants have not established that they have right of way through the suit property. It is needless to say whatever observations made while deciding application for interim injunction, are needs to be restricted for that application only. While deciding suit finally court has to consider evidence adduced by both the parties. Therefore, observations made in interim orders is no ground to reject this application. What required to be seen is whether proposed amendment is necessary and whether it would cause prejudice to plaintiffs or if application is allowed, it is going to take away any right accrued in favour of plaintiffs.

6] Learned advocate for counter claimant has argued that when other side has denied right of the claimant then mere relief of injunction is not maintainable but, declaration has to be sought. The Hon'ble Supreme Court in the case of **Anathula Sudhakar vs. Buchi Reddy decided on 25.03.2008** has explained in detailed as to when simplicitor injunction is

to be sought and when declaration is to be claimed. If counter claimant feels that main relief of injunction is not sufficient to maintain counter claim and relief of declaration is to be sought, then there is no question of causing any prejudice to the original plaintiffs. Already they have sought mandatory injunction in respect of same road. Merely because adding relief of declaration, neither nature of suit nor counter claim will be changed. Learned advocate for counter claimant has submitted that he has not going to lead any evidence after amendment. In such circumstances, by allowing amendment, it will not caused delay for disposal of suit. To avoid dismissal of counter claim on account of technical ground that, no declaration sought, proposed amendment is necessary. Though application has been moved at belated stage, on that ground alone application cannot be rejected. Application deserves to be allowed. In result, I answered point no.1 in the affirmative and I pass the following order.

ORDER

- 1] Application at Exh.264 is hereby allowed as prayed.
- 2] Permission is granted to carry out amendment in counter claim.
- 3] Counter claimant to carry out necessary amendment in counter claim and supply amended copy on record.

Date 05.12.2025
Palghar

(K. G. Sawant)
Civil Judge Senior Division,
Palghar.