

ORDER BELOW EXH. 26 IN R.C.S. NO. 48/2017

CNR No. MHTH20-000690-2017

This is an application for amendment of pleadings as provided under O. VI R. 17 of Code of Civil Procedure.

2. Plaintiff has instituted suit for perpetual injunction in respect of road which is passing through the house no. 373 and 374 located at town Shahapur, Tal. Shahapur, Dist. Thane for perpetual injunction. The disputed road is hereinafter referred as suit road. Plaintiff submits that during the pendency of suit defendant have erected the steal frame structure by side of road near the wall. The width of said structure is 2 feet. The defendant has erected the structure in order to shorten the width of road and to create hurdle to use the road to plaintiff. Therefore, as subsequent changes occurred during the pendency of suit, plaintiff intents to amend his plaint and also needs to add additional prayer in the suit. Therefore, plaintiff prayed that his application be allowed.

3. To the said application defendant has filed his say on record vide Exh. 34 and thereby denied the entire claim of plaintiff. Defendant contents that they have erected the structure to give support and to strengthen the building. Due to alleged steal structure the way of plaintiff is not blocked. The disputed building is 75 years old. Already public authorities have issued notices to the defendants and therefore in response to the same, alleged structure was erected under the guidance of expert. Plaintiff by way of present application demanding the prayers which are not acceptable. If the amendment is allowed it will change the nature of suit. Hence, prayed that

application be rejected.

4. Perused the application and say filed. Heard both the learned advocates for plaintiff and defendant. Following points arise for my determination, findings to which with reasons are discussed as under :-

Sr. No.	Points	Findings
1	Whether proposed amendment is necessary for the purpose of determining the real questions in Controversy between the parties?	...Yes
2	What order ?	Application is Allowed.

REASONS

5. O.VI R. 17 provides that court may at any stage of the proceeding can 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 question in controversy between the parties. Furthermore, the proviso provides that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of trial.

6. Firstly, it is just and necessary to mentioned here that suit is yet not reached at the stage of trial. Therefore, present application is moved prior to beginning of trial. Now, on going through the plaint it

transpires that plaintiff is claiming relief of perpetual injunction in respect of suit road that defendant be prevented from creating any act to change the suit road or to create any third party interest in the other suit property.

7. By way of present application plaintiff pleaded that during the pendency of suit defendants have erected the steal frame structure and thereby reduce the width of road. Accordingly, he is seeking amendment to bring the said fact on record as well as to add prayer in respect of alleged removal of steal frame structure and to reconstruct the same under the guidance of expert.

8. On the other hand defendant raised objection to the application on the ground that plaintiff is not entitled to claim such relief that to removal of alleged steal frame. Defendant submits that in order to protect the building they have erected the same. Therefore, same cannot be remove. Furthermore, it is argued that already structure is erected as per the guidance of expert. Therefore, there is no any need to appoint any expert as prayed by plaintiff. As far as objection in reject to pray is concerned, admittedly plaintiff intents to add the relief in his claim. Whether such relief are maintainable or not cannot be decided at this stage. Therefore, such objection cannot be acceptable at this stage.

9. Secondly, defendants raised objection that if the proposed amendment is allowed it will change the nature to suit. Admittedly, by way of proposed amendment plaintiff intents to add certain relief in the form of mandatory injunction against the defendants. However, plaintiff intents to only add relief in the suit due to change of

circumstances. Therefore, the proposed amendment does not change the entire nature of suit. Taking in to consideration the fact and circumstance on record it transpires that by way of proposed amendment plaintiff intents to bring certain facts on record which are occurred subsequent to institution of suit and also intends to claim relief to that effect.

10. The facts pleaded by plaintiff are appears to be just and necessary to determine the dispute between the parties as the facts are directly connected with the disputed issue i.e. suit road in the suit. Therefore, proposed amendment deserves to be allowed. Hence, I answer to point no.1 in affirmative.

POINT NO. 2

11. In light of my affirmative findings to point no.1 present application deserves to be allowed. Accordingly, I proceed to pass following order,

ORDER

1. Application is allowed.
2. Plaintiff is directed to carry out proposed amendment within the period of fourteen days from the date of this order.

Sd/-

(M. J. Daule)

Civil Judge Junior Division,
Shahapur.

Place : Shahapur
Date : 09/11/2019