

ORDER BELOW EXHIBIT- 21

1. The present application is moved by the plaintiff for amendment of plaint.

2. Read application and say. Heard learned Adv. A. S. Dharskar for the plaintiff and learned Adv. Jasutkar for defendants. Following point arise for determination for which I have given my findings for the reasons stated thereafter :

Sr. No.	Issues	Findings
1.	Whether the plaintiff is entitled to amend the plaint ?	...Yes
2.	What order ?	...Application is allowed

REASONS

3. Learned Adv. A. S. Dharskar argued as per contents in the application. He submitted that after dismissal of application for temporary injunction, the defendant has completed construction over the suit land. Therefore, the subsequent act is required inserted in the plaint. The defendant has encroached the suit land completely, therefore the prayer is required to be amended. All disputes are required to be decided in same suit. Therefore the amendment is necessary. Moreover legality of contents not to be decided at this stage. He relied on

4. Learned Adv. Jasutkar argued that as contended in reply at Exh. 22. he submitted that the contention in the amendment is

false. Already construction is over. The defendant has also pleaded the same in written statement. Therefore, no such subsequent event has occurred. The plaintiff is misleading and delaying the matter. He prayed for rejection of the application.

5. I have considered argument advanced by both parties. I have also gone through the contention of both parties. I have gone through citation relied by parties.

6. In *Dhanaji Kashinath Shendkar vs. Khemchand S. Chawla and others, 2011 (6) Mh. L. J. 629*, wherein it is held that it is well settled that the amendment which is necessitated and is essential on account of subsequent event, must be allowed.

7. In *Dela Gurudal Vanjari vs. Uddhal Goverdhan Rathod, 2012 (3) Mh. L. J. 941*, it is observed that 'I am of the view that the amendment needs to be permitted to avoid multiplicity of the litigation. The plaintiff is an agricultural and hails from rural areas and cannot be said to be conversant with procedural intricates. It also cannot be controverted that some part of the proposed amendment relates to the event which occurred during pendency of the litigation. The trial court was, therefore, expected to adopt liberal approach in such matter.'

8. In *N. C. Banarjee and Co. vs. Mahoj Balkrishna Shah and Others, 2011 (6) Mh. L. J. 55*, it is observed that, "It is trite that at the stage of consideration of an application for amendment, the merits of the amendment need not be gone into as also the issue of limitation, as the parties can ask for appropriate issue to be

framed in that regard at the hearing of the suit”

9. Admittedly issues are yet not framed in present matter. Therefore, trial yet to commence. In such case, while deciding application for amendment, whether the proposed amendment is necessary for adjudicating real controversy between the parties has to be seen.

10. The plaintiff has instituted suit for permanent and mandatory injunction. The plaintiffs contention is that the defendant has started digging pits for construction by encroaching in his land. Hence he prayed for restraining defendant from making construction of the suit land and also directing him to remove unauthorised construction on it. As per plaintiffs contention, after rejecting the application for temporary injunction, the defendant has constructed on the suit land and therefore he wish to amend plaint so as to insert subsequent event and also to add prayer for possession of the suit land.

11. As discussed in above cited rulings whether the proposed amendment is false or not cannot be decided at this initial stage. Even after amending pleading parties have to prove their case on merit. Therefore, if the application is allowed, other party would get opportunity to put his case and also to cross-examine plaintiff witnesses. Therefore, no prejudice would cause to the other party, if the application is allowed. Moreover to decide case on merit, and to avoid multiplicity of litigation, and to decide all dispute between parties in single proceeding, the amendment is necessary. The

defendant can be compensated for the delay caused.

As to Point No. 2:

12. As stated above, the plaintiff is entitled to carry out the proposed amendment. Therefore, this application is entitled to be allowed. Hence, I proceed to pass the following order:

ORDER

1. The application Exh. 21 is allowed.
2. The plaintiff is permitted to carry out the amendment within limitation period, subject to condition that he shall pay Rs. 200/- to the defendant.

Date : 07.02.2020

{ Manjusha M.Alone }
Civil Judge Junior Division
Karanja (Gh.)