

**ORDER BELOW EXH.21 IN R.C.S. NO. 26/2022**

(Mirabai Ajabrao Pathe V/s. Hemraj Laxman Pathade )

The plaintiff has moved the present application for amendment of pleadings in her plaint under Order VI Rule 17 of Code of Civil Procedure 1908.

2. It is contended that, in present suit due to typographical mistake the land of defendant is been mentioned as survey No. 17 instead of survey No. 17/1(a). It is further contended that, the amendment is necessary as regards the survey number and eastern side boundary mark. She has also contended that, the said amendment will not change the nature of suit, there will be no prejudice to the defendant. Hence, she prayed to allow the application.

3. The defendant has filed say and contended that, the proposed amendment will change the nature of suit, it will cause prejudice to the defendant. Further, contended that, application has no merit and hence, has to be rejected with cost.

4. Considering the above said rival contentions of the parties following points arise for my consideration.

Sr. No.	Points	Findings
1.	Whether proposed amendment is necessary for the purpose of determining the real question in controversy between the parties ?	... Yes

2.	What order ?	... As per final order.
----	--------------	-------------------------

5. Perused the record. Heard the learned advocate for the parties. Record shows that, present suit is for declaration and mandatory injunction. Further, the plaintiff has come with the case that, the land survey No. 25 is owned by her. Further, the land survey No. 17 is the land of defendant. By way of present application, plaintiff is contending that, the land of defendant is not survey No.17 but its 17/1(a) and hence plaintiff is intending to rectify the plaint as regards survey number.

6. The dispute is regarding the right of way. The defendant has not disputed that the land survey No. 17/1(a) does not belongs to him. In present matter the plaintiff has adduced her evidence but cross-examination is yet to be begin. Considering the nature of the suit, I hold that, to decide the matter on its own merits, the plaintiff has to be permitted to do the needful amendment. The proposed amendment will not change the nature of suit. So after considering the stage of matter, nature of proposed amendment, I hold that, the proposed amendment is not necessary to decide the controversy between the parties. Hence, I answer point no.1 in the affirmative. Considering all above aspects I proceed to pass the following order.

**ORDER**

1. Application is allowed.
2. The plaintiff is permitted to do the necessary amendment and to file the amended copy of plaint within stipulated period.
3. Parties are directed to expedite the matter.

Karanja (Gha.)  
Date:- 09/05/2024

**(V. S. Wagh)**  
Civil Judge, Jr. Division,  
Karanja (Gha.), Dist. Wardha.