

Order below Exh. 23
(Dated 21/03/2018)

Application under Order 6 Rule 17 of the Code of Civil Procedure.

2] Plaintiff submitted that after presentation of this suit the defendants no.2 to 4 had created new road through the suit properties. Due to creating of the new road by the defendants the heavy loss is caused to them. So by this proposed amendment plaintiff wants to amend relief creating the new road which is illegal and for that a declaration that the act of the defendants of creating a new road without measurement is illegal. They also submitted that, due to the acts of the defendants of creating the new road a heavy loss is caused and for that they are claiming the compensatory cost. In the application how much loss is caused and in which the gat number is mentioned in this application. The plaintiff by this amendment wants to amend even in the prayer clause that the road created to defendants no.2 to 4 on dated 21/08/2015 is illegal for the loss caused to the plaintiff for that an inquiry u/o 20 Rule 12 of CPC, for mandatory injunction and for demarcation of the boundary marks. If the proposed amendment is allowed it will not change the nature of suit. So they prayed to allow the application.

3) Defendants not filed their say to this application to that order is passed that the application to proceed without say.

4) I gone through pleading of the plaintiff. The plaintiff brought the suit for declaration, mandatory injunction and perpetual injunction. It is the case of plaintiff that the defendants are trying to create new road through the properties which are mentioned in the plaint. When the suit was presented the defendants were trying to create a new road but after the presentation of the suit the defendants created a new road through the properties which are mentioned in the plaint.

Here the act of defendant no.2 to 4 as contended by the plaintiff is after the presentation of the suit. Considering the proposed amendment, in my view if the proposed amendment is allowed it will not change the nature of suit but it will be helpful for the adjudication of the suit as I point of whether the acts of defendants as contended by the plaintiff is illegal or not and for that the prayer is for declaration. Furthermore, when the suit was presented it was for the relief of restraining the defendants but after presentation of the suit the new road is created as contended by the plaintiff. So it is also to be determined whether the defendants no.2 to 4 had created the new road as contended by the plaintiff and if it is created then whether the act of the defendant no.2 to 4 is illegal or not is to be determined. By this

proposed amendment claiming the compensation from the defendants for the loss which they sustained. When the suit was presented the court fees paid but plaintiffs are now claiming the compensation and for that required court fees is to be paid. Hence, I am of the view the proposed amendment to be allowed. Hence, I pass following order.

ORDER

- 1] Application is allowed.
- 2] Plaintiff to carry out the proposed amendment within seven days from the order.
- 3] Plaintiff also to pay the required court fee according to law within seven days from the date of order.
- 4] If the plaintiff fails to carry out the proposed amendment and pay the court fees as required in such these application deemed to be rejected.

Sd/-xxx

(R.K. Gujjar)

2nd Jt. Civil Judge (S.D.), Washim.

Dt.21/03/2018

CERTIFICATE

I affirm that the contents of this P.D.F. File Judgment/
Order are same word to word, as per the original Order.

Name of the Stenographer : R. K. Pawar, Stenographer(LG)
Court Name :- 2nd Jt. Civil Court (Sr.Dn.), Washim.
Date :- 21/03/2018
Order signed by the Presiding
Officer on :- 21/03/2018
Order uploaded on :- 31/03/2018