

ORDER BELOW EXH. 41

Plaintiff has filed this application under O. VI R. XVII, r/w section 151 of the C.P.C. The defendants filed their say.

2] Contention of the plaintiff is that the suit is for permanent injunction. At the time of filing of the suit the construction was at initial stage. After rejection of their temporary injunction application, the defendant has completed the construction of wall over the suit property without obtaining permission from defendant no. 2. Therefore for proper decision of the question in controversy between the parties it is necessary for the plaintiff to amend the plaint. Thus the plaintiff has prayed to allow the amendment in the plaint by deletion and addition of the relevant pleadings.

3] The defendant no. 1 resisted the application. He denied the fact of completion of construction by him and submitted that there are no after events taken place. Plaintiff wants to amend the fact which was within his knowledge. Therefore the application is not tenable and devoid of merit. On these counts, the defendant no. 1 prayed for rejection of the application. The defendant no. 2 also opposed the application and submitted in its say that, the pleadings which are already on

record cannot be deleted. Hence he prayed to reject the application.

4] Heard both the sides. Perused record. From the rival contentions of the parties following question arose for my determination:-

<u>Sr. No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1)	Whether the amendment is necessary for determination of real controversy between the parties ?	Yes
2)	What order ?	As per final Order

REASONS

As to point no. 1 and 2:

5] Learned Advocate for the plaintiff submitted that, the plaintiff has prayed for the relief of permanent injunction. But during the pendency as the construction of the wall is carried out by the defendant no. 1, therefore the amendment is necessary to bring these facts on record. If the plaintiff is not permitted to amend the plaint, it will cause injustice to the plaintiff and the real controversy between the parties will not come on record. Therefore he prayed to allow the application

6] Learned Advocate for the defendant no. 1 submitted

that, the issues are already framed at Exh. 31 on 09/06/2016 and the instant application came to be filed on 23/02/2017. The plaintiff has not shown his due diligence therefore his case does not come under the preview of the proviso to O. VI R. 17. Apart from this, departure from his own pleadings is not permissible under the civil procedure code. At present the case is posted for evidence, if at this stage the plaintiff is permitted to amend his plaint, defendant will cause prejudice.

7] Perusal of record it reveals that the pleadings of the plaintiff are in consonance with the relief of prohibitory injunction. The plaintiff is coming with the specific reason for seeking amendment is that, during pendency construction of the disputed wall is completed by the defendant. In such circumstances if the proposed amendments are allowed relief prayed by the plaintiff is going to be change. At the same time if these amendments are not permitted, it will lead to multiplicity of the proceeding and the real controversy between the parties will remain undecided. Admittedly the issues are framed in the suit but parties are yet to lead the evidence. Therefore the trail is yet to commence in its true sense. If at the earliest stage the amendment is allowed it would be helpful for parties to lead the evidence. Even after the proposed amendments, defendants are certainly having an opportunity to consequentially amend their written statement. Therefore, no prejudice is likely to cause to

the defendants. The delay so cause, can be compensated by imposing appropriate costs. Therefore, I answer to the point no. 1 in the affirmative and in response to the point no. 2, I pass the following order:-

ORDER

1. Application is allowed subject to cost of Rs.300/- to be paid by the plaintiff to each defendant.
2. Plaintiff shall carry out the amendment within 14 days from the date of this order and to file the copy of amended plaint without fail.

Karanja.
Dated: 11/11/2019

Sd/-
(Kedar K. Chaudhari)
2nd Jt. Civil Judge Junior Division,
Karanja Dist. Washim.

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 :- V. R. Gurawa (Stenographer-3)

Steno.

Court Name :- 2nd Civil Judge (Jr. Dn.) and J.M.F.C.,
Karanja (Lad), Dist. Washim.

Date :- 11/11/2019

Order signed by :- 11/11/2019

the presiding

officer on

Order uploaded :- 11/11/2019

on