

**ORDER BELOW EXH-24**

1. This is an application filed by the plaintiff under order VI rule 17 and order I rule 10 of the code of Civil Procedure for amendment in plaint and adding the names of Shri.Vijay H.Banarashi Babu as a defendant no.5.

2. Present suit is filed for removal of encroachment, Declaration and permanent. It is the contention of the plaintiff that during the pendency of this suit the defendant has constructed a borewell in the suit property. When the said borewell was about to dig, the plaintiff restricted the defendants but the defendants later on constructed the borewell in the suit property. In this regard, the plaintiff wants to add some portion in the plaint and also to add the truck driver of the said truck used for the construction of the borewell namely Shri.Vijay H. Banarashi Babu, as defendant no 5. Hence the plaintiff prayed accordingly.

3. The say of the defendants was invited. Learned advocates for the defendants strongly opposed the present application and prayed for the rejection of the same with cost.

4. Perused the application and heard learned counsel for the plaintiff and defendant no. 2 to 4. On perusal of proposed amendment, it appears that the plaintiff wants to mention development made in the suit property, after the filing of this suit. It only clarifies how the suit property is utilized by the defendant no.1. Therefore, it will not

change the nature of the suit. The suit will still remain for removal of an encroachment, declaration and permanent injunction. In the present matter, though the trial has been commenced, the plaintiff has filed his evidence on affidavit but he has not been cross examined by the defendants hence it can be allowed liberally.

5. So far as the prayer for addition of the party is concerned, the proposed defendant no 5 is neither the necessary party nor the proper party to the suit. He worked only under the instructions of the defendant no.1. He has no interest in the suit property. Therefore, the suit may be proceeded and effective orders may be pass in the absence of the proposed defendant no5. Hence, I do not find any reason to add the proposed defendant no. 5 as a party to the suit. Hence following order.

### **ORDER**

1. Application is partly allowed.
2. The plaintiff is allowed to add Para 1A as mentioned in para 2 of the present application.
3. The plaintiff shall mention the name of the truck driver in the proposed amended para (1A) instate of defendant no.5.
4. Plaintiff to carry out amendment within 14 days and file amended copy of the plaint.

Date : 05/08/2022 Karanja Lad		Sd/- ( Smt. S.N.Pund) 2 <sup>nd</sup> Jt.Civil Judge (Jr.Dn.), Karanja Lad
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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 Stenographer	:	Manoj T. Kelatkar, Jr. Clerk
Court Name	:	2 <sup>nd</sup> Jt. Civil Judge (JD) & JMFC, Karanja.
Date	:	06-08-2022
Order signed by the Presiding Officer on	:	06-08-2022
Order uploaded on	:	06-08-2022