

ORDER BELOW EXH. 77 IN RCS NO. 19/2014
(Passed on 16.02.2023)

1. This is an application filed under Order 6 Rule 17 of the CPC by the defendant no.1 seeking amendment of W.S.
2. It is submitted that, the present suit has been filed for removal of encroachment and mandatory injunction. Wherein, defendant no.1 has filed written statement vide Exh.15 on 10-07-2014. However, during the pendency of instant suit, the defendant no.1 applied to Tahsildar, Karanja for correction of the 7/12 extract of field survey no.156 situated at Mauja Kali. Out of which, defendant no.1 has purchased the land admeasuring 0H-87R by registered sale deed dated 16-04-1986 from Nanappa Bonte. The said case was registered as RTS-59/Kali Karanja/05/2014-2015. Wherein, by order dated 18-09-2015, 7/12 extract of survey no.156 came to be corrected.
3. It is further submitted that, Tahsildar, Karanja has also got measured field survey no.156 through the agency of TILR Karanja on 28-04-2015 and after perusing the map issued by TILR Karanja found that land admeasuring 0H-07R out of survey no.156 went in the Karanja-Mangrulpir Road and therefore 0H-07R land came to be reduced from the 7/12 extract from the ownership of Nanappa Bonte and that came to be shown in the road.
4. It is further submitted that, while filing the written statement defendant no.1 the above said order of Tahsildar was not passed and order of Tahsildar, Karanja is subsequent event and a fact which took place after filing of the W.S. which is necessary to be pleaded in the written statement. Hence, defendant no.1 is seeking proposed amendment in the W.S. as under-

Para 13 A-

“ That while pending this suit the defendant no.1 have filed one case before Tahsildar, Karanja for correction of the 7/12 extract of field survey no.156 which is situated at Mauja Kali and out of which this defendant no.1 has purchased the area of 0.87 R land by registered sale deed dated 16-04-1986 from the owner Nanappa Bonte. The said came to be registered as RTS-59/Kali Karanja/05/2014-2015 and in that case the order came to be passed on 18-09-2015 and the 7/12 extract of survey no.156 came to be corrected. And Tahsildar, Karanja has also got measured this filed survey no.156 through the agency of TILR Karanja on 28-04-2015 and after perusing the map issued by TILR Karanja found that the area of 0.07 R land went in the Karanja-Mangrulpir road out of this survey no.156 and specially of the ownership of Nanappa Bonte and the area of 0.07 R land came to be reduced from 7/12 extract from the ownership of Nanappa Bonte and that came to be shown in the road.”

5. Lastly, it is submitted that no prejudice would be caused to the plaintiff if proposed amendment is allowed. Similarly, it will not change the nature of suit. Therefore, prayed to allow the present application.

6. This is application has been opposed by plaintiff by filing his Say below the application. Learned advocate for the plaintiff would submit that the instant application has been filed at belated stage. Moreover, the proposed amendment being unnecessary and not bonafide. It is further contended that, the present application as is not maintainable and has been filed just to prolong the matter. It is further contended that, the trial in the suit has commenced. Therefore, prayed to reject the application.

7. Heard both sides. Perused the application, Say and gone through the record.

8. Record shows that, the plaintiff has filed the instant suit in the year 2014 seeking relief of removal of encroachment and perpetual injunction against the defendants. Record further shows that, after framing of

Issues below Exh.17 the plaintiff has filed his affidavit of examination in chief below Exh.25 on 05-03-2016. However, it appears that, the examination in chief of the plaintiff is yet to be recorded.

9. Now, I advert to Order 6 Rule 17 of CPC which provides for amendment of pleadings. The said provision empowers the Court to grant either party to alter or amend his pleading at any stage of proceeding which would be just and necessary for the purpose of determining the real question in the controversy between the parties. However, the only rider is given in the proviso attached to Rules 17 of Order 6 which provides that no such application of amendment shall be allowed by the Court after the trial has commenced unless the Court comes to the conclusion that despite of due diligence the parties could not have raised the matter before the commencement of trial.

10. In the case on hand, apparently, the trial has not been commenced. As such, the plaintiff has filed on record his affidavit of evidence but he has not bothered to step into witness box to prove the contents thereof. Therefore, as per Order 6 Rule 17 of CPC there is no hurdle to allow the application. But in view of the law laid down by Hon'ble Apex Court and Hon'ble High Court the Court is further required to see the other two elements while considering the instant application viz., 1. Bonifide of the applicant and 2. Whether proposed amendment would change the nature of suit if allowed?

11. In the instant application, which is supported by an affidavit has been specifically pleaded that, during the pendency of suit an application was made to the Tahsildar by defendant no.1 for correction in the 7/12 extract of the land bearing survey no.156 which was allowed and land admeasuring 0H-

07R came to be reduced from the 7/12 extract from the ownership of Nanappa Bonte and that came to be shown in the road. It is also pleaded that, while filing the written statement Exh.15 by defendant no.1, the above said order of Tahsildar was not passed and it is a subsequent event which took place after filing of the W.S., therefore, same was not mentioned in the W.S. Therefore, the proposed amendment in the written statement is necessary to be plead the subsequent event which is essential.

12. Considering the above mentioned facts and circumstances, I am of the considered view that, the proposed amendment is bonafide and same shall not change the nature of suit if allowed. Nor it is going to prejudice in any way to the plaintiff as such the trial is yet to commence. Hence, in view of the foregoing discussion, I deem it appropriate to allow the instant application. Therefore, I proceed to pass following order-

ORDER

1. Application (Ex.77) is allowed.
2. defendant no.1 is directed to carry out the proposed amendment in the W.S. within 14 days from the date of order.
3. No order as to costs.

Date: 16/02/2022

(M.H. Haque)
Civil Judge, Jr. Division,
Karanja-Lad.