

Order below Exh.27(Passed on 22nd June, 2018)

1. Instant application is moved by the plaintiffs for making amendment in their plaint as per Order 6, rule 17 of CPC.. Learned Advocate for plaintiffs Shri R.D. Jadhav submitted that Plaintiffs/applicants have filed this suit on 09.08.2017 for perpetual injunction and alongwith the suit they had filed an application for temporary injunction. On 16.09.2017 this court passed temporary injunction order in favour of plaintiffs and against the defendants restraining defendant from making any construction over the plaintiff's plot no. 255. But defendants even after having knowledge of this order, continued and completed their construction work over the encroached portion of plaintiffs plot. Thus, the defendants have violated the order passed by this Court below Exh.05. Due to the construction work of the defendants, now plaintiffs are unable to enter into their plots i.e. in plot no. 254 and 255. Therefore, plaintiffs/applicants now wants to make an amendment in their plaint by adding para no. 3-A as mentioned in this application. Plaintiffs also want to amend their prayer clause by adding a relief of mandatory injunction directing the defendants to demolish their construction work made by encroaching over the northern side of plaintiff's plot no. 255 along-with recovery of the said encroached portion. Plaintiffs further submitted that by making such amendment the nature of suit will not at all be affected and it will not cause any hardship to the defendants. Furthermore, the present suit is fixed for the evidence of plaintiffs and yet the chief examination has not been commenced. Therefore, considering all these facts, this amendment application may kindly be allowed.

2. Learned Advocate for defendant no.1 and 2 Shri T. M. Khan by filing his say submitted that by way of this application plaintiffs want to create a new case. Furthermore, by this amendment, nature of the suit is going to be changed . Hence, the instant application may kindly be rejected.

3. Perused the application and say filed thereon. Heard the learned Advocates of both the parties.

4. As per Order 6, Rule 17 of CPC, the Court may at any stage of the proceeding allow either party to alter or amend his pleading, in such manner and on such terms as may be just, and such amendment shall be made, as may be necessary for the purpose of determining real questions in controversy between the parties. The proviso clause of Order 6, Rule 17 states that, no application for amendment shall be allowed after the trial is commenced, unless the Court comes to the conclusion that inspite of due diligence , parties could not have raised matter before the commencement of the trial.

5. In the present suit, it is the matter of record that plaintiffs have filed this amendment application before filing of their evidence affidavit. Therefore, enough opportunity will also be available to the defendants to bring on record all the material facts and evidence available before them. Thus, in case the application is allowed, it will not cause any hardship or loss to the defendants.

6. It is the general principle of law that Court should be liberal while deciding amendment application. Furthermore, by this amendment defendants will not get prejudiced and the nature of suit will not be changed. After-all, after this amendment, defendants will be at liberty to adduce evidence, if any, on their part. Thus, for deciding the suit on merit and for determining the real question in controversy between the parties, it would be proper and reasonable to give one opportunity to the plaintiffs to make necessary amendment by adding para no. 3-A and by amending their prayer clause, as mentioned in their amendment application. Therefore, considering all the facts and circumstances of the instant suit, I am of the view that the application below Exh.27 is to be allowed. Hence, the following order.

Order

1. Application below Exh.27 is allowed.
2. Plaintiffs are directed to carry out the necessary amendment within 14 days from the date of this order.

Date: 22.06.2018

(Prasad B. Joshi)
2nd Jt.Civil Judge (Jr.Dn.),
Darwha.