

ORDER BELOW EXH. 25

1. This is an application by plaintiff for amending her pleading. It is only contention in said application that due to typographical mistake in para No. 3 of the plaint there was change in the boundary of the well. The said amendment is necessary to decide the suit on the merit. Further, plaintiff is not changing nature of the suit by way of amendment.

2. On the contrary defendants have strongly opposed this application on the ground that the proposed amendment will change nature of the suit and it will cause prejudice to them. Further issue has been framed and even plaintiff has filed her evidence on 13-08-2012 therefore, after commencement trial amendment application is not maintainable.

3. Considering the above rival contentions following issues are framed and their reasons are given with findings as under ;

Points

Findings

- | | |
|---|----------------------------------|
| 1. Whether plaintiff entitle
to amend her pleading ? | Affirmative. |
| 2. What order ? | Application is
allowed. |

4. Perused the application and say filed by the defendants. The purpose and object of Order 6 Rule 17 is to allow either party to alter or amend his pleadings in such a manner and on such terms as may be just, the power to allow amendment is wide and can be exercised at any stage of proceeding in the interest of justice. It is

settled principles of law that amendment cannot be claimed as of right and under all circumstances Courts while deciding should not adopt hypertechnical approach. Liberal approach should be the general rule in case of where the other side can be compensated with cost. Plaintiff filed suit for mandatory injunction considering the proposed amendment it is beyond her pleading because there is no such connection in between suit property and situation of the well in which corner it was situated. In her pleading plaintiff simply pleaded that there was one well situated in the premises of the plaintiff in the corner of East-South which is admeasuring 10/10. Now, plaintiff wants to plead that the well was not situated in East-South corner but it was situated in East-North corner. Even though defendants in their written statement admitted that there was one well situated in their premises therefore, as per the objection raised by the defendants it seems that application liable to be allowed.

5. By this amendment plaintiff not putting new case nor it will change the nature of the suit. Only objection remains on the point of commencement of trial. Issue has been framed on 20-08-2011 and plaintiff has filed her evidence on 03-08-2012. Therefore, it can be simply said that trial has been commenced. As early said if the amendment will compensate other party in terms of costs then Court should not adopt hypertechnical approach. By this amendment plaintiff will be saddle by means of costs. Hence, considering the nature of the amendment issue No. 1 is answered in affirmative and in answer to issue No. 2 following order is passed.

ORDER

1. Application Exh. 25 hereby allowed subject to cost of Rs. 250/-.

2. Plaintiff to do necessary changes in her pleading within 14 days.
3. Plaintiff is directed to supply copies of amendment to the defendants.

Date : 22-11-2012

(K. B. Kamgauda)
Jt. Civil Judge (Jr.Dn.)
Umarkhed