

MHPU180016352016



R.C.S. No. 230/2016

Ramesh And Anr.

Vs.

Sunil And Ors.

ORDER BELOW EXH.68.

(Passed On 21/11/2025)

The present application has been filed by the plaintiffs under Order VI Rule 17 of the Code of Civil Procedure, seeking permission of the Court to carry out the proposed amendment in the plaint as set out in this application. The defendants have opposed the application on the ground that the chief-examination affidavit has already been filed on record. In the alternative, the defendants have requested that, if the Court is inclined to allow the application, it may do so by imposing heavy costs.

2. It is the contention of the plaintiffs that the present suit has been filed for declaration, cancellation of deed, and injunction. The plaintiffs submit that they changed their advocate, and upon such change, it came to their notice that due to oversight, a typographical error occurred in the sale deed number mentioned in Paragraphs 3 and 5 of the plaint. Instead of sale deed No. 1437/95, it has been incorrectly typed as Survey No. 1438/95. The plaintiffs, therefore, seek permission to correct the said typographical error. Secondly, the plaintiffs submit that on 03/10/2025, when plaintiff No. 1 approached defendant No. 1, defendant No. 1 informed him that defendant Nos. 2 to 4 had already been declared as owners of the suit property. The plaintiffs submitted that they have approached this Court on the basis of (i) an Agreement to Sell dated 03/12/1992 bearing Registration No.

382/1992, and (ii) the Sale Deed bearing Registration No. 1437/1995 dated 12/07/1995. Therefore, it has become necessary and incumbent upon the plaintiffs to assert their ownership rights on the basis of these instruments. The plaintiffs further submit that since the defendants are denying the ownership of the plaintiffs, it has become necessary to amend the plaint by adding appropriate averments regarding the declaration of ownership and by suitably modifying the relief clause. The plaintiffs contend that if the proposed amendment is allowed, the nature of the suit will not be altered, nor will any hardship be caused to the defendants. On the contrary, if the amendment is refused, the plaintiffs will suffer hardship, as the amendment is essential for the proper adjudication of the dispute between the parties in relation to the suit property. In view of the above, the plaintiffs respectfully pray that the present application be allowed.

3. Conversely, the defendants submit that the chief-examination affidavit has already been filed on record therefore, the present application is liable to be rejected. In the alternative, the defendants pray that if the application is allowed, heavy costs be imposed upon the plaintiffs.

4. Heard both sides, perused the application, and examined the record. From the record, it appears that the plaintiffs have filed the present suit seeking declaration in respect of the sale deed executed by the defendants and for injunction relating to the suit property. The plaintiffs have already filed their chief-examination affidavit at Exhibit 44 however, the plaintiff has not yet entered the witness box. I have considered the provisions of

Order VI Rule 17 of the Code of Civil Procedure, which provide that the Court may, at any stage of the proceedings, allow either party to alter or amend their pleadings in such a manner and on such terms as may be just, and that all such amendments as are necessary for determining the real questions in controversy between the parties shall be allowed. The proviso further states that no application for amendment shall be permitted after the commencement of trial unless the Court is satisfied that, despite due diligence, the party could not have raised the matter before the commencement of the trial.

5. In the present case, chief-examination affidavit of the plaintiffs has been filed on record, though the witness has not yet entered the witness box. Filing of an affidavit in lieu of examination-in-chief amounts to commencement of trial. Therefore, in the present matter, the trial has already commenced within the meaning of Order VI Rule 17 of CPC. Accordingly, it is incumbent upon the plaintiffs to demonstrate why they could not have filed the present amendment application before the commencement of trial.

6. Now coming to the factual matrix of the present application, the plaintiffs have submitted that they changed their advocate, and at that time, the typographical error in the plaint came to their notice. The said typographical error appears to be minor in nature. Instead of instrument No. 1437/95, the plaintiffs have mistakenly mentioned instrument No. 1438/95 in Paragraphs 3 and 5 of the plaint. This clearly appears to be a mere typographical error and nothing more. Therefore, this amendment

is required to be allowed in order to effectively adjudicate the real controversy between the parties.

7. Secondly, the next amendment sought by the plaintiffs pertains to the relief of declaration of ownership. The plaintiffs submit that when plaintiff No. 1 visited the suit property and met defendant No. 1, at that time defendants No. 2 to 4 claimed themselves to be the owners of the suit property. In such circumstances, the plaintiffs rely upon a subsequent event wherein the defendants denied the ownership of the plaintiffs. Thus, the plaintiffs have sufficiently explained, with due diligence, why they could not file the present application before the commencement of the trial.

8. It is the primary duty of the Court to determine whether the proposed amendment is necessary for deciding the real controversy between the parties. In the present suit, the plaintiffs have sought declaration and cancellation of the deed executed in favour of defendant Nos. 2 to 4. By way of the proposed amendment, they now seek further clarification regarding their ownership over the suit property an issue which is already inherent in the existing reliefs. Therefore, the amendment only seeks to elaborate on an issue already forming part of the suit. If permission to amend is denied, definite hardship will be caused to the plaintiffs. From the nature of the proposed amendment, it appears necessary for a proper and effective adjudication of the dispute on its merits. In one suit, it is essential to determine whether the plaintiffs or the defendants are the true owners of the suit property. If the amendment is allowed, no hardship will be

caused to the defendants, as they are already asserting their own ownership and will have full opportunity to defend the plaintiffs' claim. However, if the amendment is rejected, the plaintiffs will be left without an appropriate remedy to assert their ownership. The defendants filed their written statement in the year 2016, and the plaintiffs filed the present amendment application in the year 2025. Although there is a delay of approximately nine years, mere delay cannot be the sole ground to reject the application, especially when the amendment is essential for resolving the real issues in controversy. Such delay can be compensated by imposing costs on the plaintiffs. Considering the delay, in my opinion, costs of Rs. 4,000/- would be appropriate to meet the ends of justice. Taking into account all aspects, I am of the view that the present application deserves to be allowed, subject to payment of costs of Rs. 4,000/-. Thus, I pass the following order:

ORDER

- 1) The application below Exhibit 68 is allowed, subject to costs of Rs. 4,000/-, to be paid to the defendants on or before the next date.
- 2) Upon compliance with the payment of costs, permission is granted to the plaintiffs to carry out the proposed amendment within 14 days from the date of such compliance.
- 3) The plaintiffs shall file the amended copy of the plaint as required, at the earliest possible after carryout the amendment in the plaint.
- 4) Both parties shall take note of this order.

Daund.
Dt.21/11/2025.

(A. S. Shaikh)
4th Jt. Civil Judge (Jr.Dn.),
Daund.

CERTIFICATE

I affirm that the contents of this PD.F file, Order are same, word to word, as per the original order.

Name of the Steno :- Deepak A. Merukar, Grade-3
Court / Panel :- A. S. Shaikh
4th Jt. C.J.J.D. & Judicial Magistrate
First Class (Court No. 4) Daund.
Order / Judgment date :- 21/11/2025.
Order / Judgment signed by :- 21/11/2025.
the Presiding Officer on
Order/ Judgment uploaded on :- 24/11/2025.