

MHAH080001372025

Madhukar Mesu Sansare



Vs.

Santosh Kisan Zite

ORDER BELOW EXH. 28 IN R.C.S. NO. 67/2025

This is an application for amendment of plaint by the plaintiff under order VI rule 17 of Code of Civil Procedure, 1908 (hereinafter referred C.P.C).

2. Perused the application and say filed at Exh. 30 by defendant and record. Application is well supported by an affidavit (Exh. 29). Read the documents filed by plaintiff along with list Exh. 32.

3. Heard both sides. They both argued as per their application with say respectively.

4. The proposed amendment is in respect of alteration in description of the suit property along with boundaries, addition into plaint para no. 1 and addition, deletion into plaint para no. 2. According to plaintiff, proposed amendment is of technical nature. It will not change subject matter and nature of the suit proceeding. It will not prejudice the defendant. He has to make correction in plaint in that respect. On the contrary, according to defendant, plaintiff has concealed the said fact from the court deliberately. Plaintiff does not come with clean hands. The proposed amendment will change the nature of suit proceeding. The present application is abuse of the process of the court.

5. In this regard, I want to quote proviso of O. VI, R 17 of C.P.C. which runs as under -

'Provided that no application for amendment shall be allowed after the trial has commenced, unless the courts comes to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of trial'.

6. Proviso to O. VI R. 17 itself clears the position that, if proposed amendment is sought after commencement of trial, then question of due diligence arises. Perused the roznama, it reveals that, matter is more than 01 year old. In the case at hand, the issues have not been framed till today. The suit is unready. The trial is not commenced yet. Proposed amendment is sought by plaintiff before filing of an affidavit-in-lieu of chief examination i.e. before commencement of trial. Hence, question of due diligence does not arise into existence.

7. In this regard, profitable reliance can be kept on **Rajkumar Gurawara Vs M/s S.K.Sarawagi reported in AIR 2008 SC 2303**, in which Hon'ble Supreme Court held that, pre-trial amendments are to be allowed liberally than those sought to be made after commencement of trial.

8. The defendant during the argument took objection that, plaintiff has carried out abuse of the process of the Court as per Section 151 of the C.P.C. It is matter of record that, on 17.03.2026 both parties have argued below Exh. 05. Suit is posted for pronouncement of order below Exh. 5 on next date.

On 30.03.2026 plaintiff has filed present application as per order VI rule 17 of Code of Civil Procedure, 1908. No doubt, the present application is put before the commencement of trial. But, it is also pertinent to note here that, present application is put by plaintiff after hearing both parties below Exh. 5. Resultantly, it delayed the stage of pronouncement of order below Exh. 5. Therefore, this court has to re-hear both parties below Exh. 5.

9. The proposed amendment will not certainly change the nature of the plaint and cause of action. Thereby no prejudice will be caused to the defendant. Defendant will get equal opportunity to raise his defence. Proposed amendment is necessary for the purpose of determining the real questions in controversy between the parties.

10. In view of above discussion, the application succeeds and deserves to be allowed in terms of following order.

ORDER

1. The application (Exh. 28) is allowed subject costs of Rs. 500/-. Costs amount be paid to Taluka Legal Service Authority, Sangamner.
2. The plaintiff is directed to carry out necessary amendment forthwith and supply the copies of amended plaint to the court and defendants within next 14 days from today.
3. Defendant is permitted to file amended written statement, if any.

4. Both parties are directed argue afresh below Exh. 05.
5. Parties to note.

Sangamner
Date : 30.03.2026.

(K. K. Patil)
2nd Jt Civil Judge, Jr. Dn.,
Sangamner.