

MHAH080001402014

Baban Pandurang Karad etc.



Vs.

Laxman Keru Karad etc.

ORDER BELOW EXH. 108 IN R.C.S. NO. 61/1993

This is an application for amendment of plaint by the plaintiffs 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. 115 by defendant No. 3 to 5 and record. Application is well supported by an affidavit (Exh. 109).

3. Heard both sides. They argued as per their application with say respectively. The advocate for defendants argued that, sufficient opportunity may be given to defendants for filing either additional written statement or counter-claim.

4. The proposed amendment is in respect of addition of parties in title clause of the plaint, addition into para no. 1 i.e. description of the suit propertis, addition into para no. 2, addition of para no. 3A, 3B, 3C after para no. 3, addition into para no. 6 – valuation of the suit, addition of para no. 9A1 after prayer para no. 9A of the plaint. According to plaintiffs, meantime wife of defendant no. 1 namely Sitabai Laxman Karad has sold out suit properties to third persons. There are subsequent changes in circumstances. The proposed amendment will not change nature of the suit. It is necessary to avoid multiplicity of proceeding and just decision of the case.

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 record, it reveals that, matter is more than 30 years old. In the case at hand, the appeal from order No. 55/2012 is pending before the Hon'ble High Court Bench at Aurangabad. It was disposed on 09.10.2025. The order of the lower Appellate District Court is confirmed by Hon'ble High Court Bench at Aurangabad. The suit is remanded back to Trial Court for afresh hearing. The R & P of the suit have been received to this Court on 27.11.2025. Record reveals that, plaintiffs have filed present suit for seeking relief of partition and possession in respect of the suit properties. The issues have framed at Exh. 36 on 23.09.1994 by my learned predecessor. The para no. 18 of the judgment dated 17.02.2012 delivered by Hon'ble District Appellate Court, Sangamner in R.C.A.No. 950/2000 (old R.C.A.No. 88/2000) reveals that, Hon'ble Appellate Court has given directions to the plaintiffs for carrying out amendment into plaint. Proposed amendment is sought by plaintiffs for afresh hearing of suit. 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 proposed amendment prima-facie appears to be the subsequent event and change in circumstances. It will not certainly change the nature of the suit and cause of action. The defendants will get equal opportunity to file additional written statement, if any. Thereby no prejudice will be caused to the defendants. Proposed amendment is necessary for the purpose of determining the real questions in controversy between the parties.

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

ORDER

1. The application (Exh. 108) is allowed.
2. The plaintiffs are directed to carry out necessary amendments forthwith and supply the copies of amended plaint to the court and defendants within next 14 days from today.
3. Parties to note.

Sangamner
Date : 14.02.2026.

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