

ORDER BELOW EXHIBIT 148

This is an application by the defendants seeking amendment as per Order VI Rule 17 of the Code of Civil Procedure.

02. It is the case of the defendants that present suit is filed for declaration and injunction. The subject matter of the suit is to determine whether the property in the suit is in village station i.e. in block No.1283 or how? While the suit was pending, the Deputy Director, land Revenue, Nashik Pradesh, Nashik, vide his order dated 27.02.2016, in appeal No.618/2016, ordered the permanent enumeration of Block No.1283. Accordingly on the application of defendant No.2, the permanent enumeration of block No.1283 has been done on 03.12.2021 and 01.01.2021. The enumeration map is very necessary and decisive for the result of the present case. As the said enumeration had been done during the pendency of the suit therefore, the defendants could not mention about in in their written statement. Hence, now they prayed for permission to amend their pleadings.

03. Defendants No.2 and 3 sought insertion of Para No.9A after para No.9 of their written statement as follows:

04. Although the say of the plaintiffs was called for, they failed to file their say hence, application proceeded without their say.

05. Perused the record. Heard the arguments advanced by learned advocate for defendants No.2 & 3. Following points arise for my determination and my findings thereon and reasons thereof are as follows:

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1.	Whether defendant No.2 and 3 satisfy that the proposed amendment is necessary for determining the real question in controversy between the parties?	YES
2.	What order?	Application is allowed

REASONS

AS TO POINT NO. 1

06. Defendant No.2 and 3 in the present application have prayed for amendment in their pleadings as per Order VI Rule 17 of the Code of Civil Procedure. Order VI Rule 17 of the Code of Civil Procedure enumerates the circumstances under which the court may allow either parties to amend their pleadings. The relevant provision of the Code of Civil Procedure is reproduced below:

*Order VI Rule 17: Amendment of pleadings.- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be **necessary for the purpose of determining the real questions in controversy between the parties** :*

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

07. At the outset, it would not be out of milieu to refer here that the trail of the present suit has commenced. On this background, in order to amend the pleadings will have to satisfy this court the proposed amendment is necessary for determining the real question of controversy between the parties.

08. The present suit is filed for declaration and perpetual injunction against the defendants. Herein, the plaintiffs claimed their possession over the suit way. Therefore, considering the nature of suit, it would be necessary for the defendant No.2 and 3 to bring on record the exact location and nature of the suit way. Hence, if they are not allowed to amend their pleading by my inserting the fact of enumeration of block No.1283 and its map on record, it would be difficult to determine the real question of controversy between the parties at time of trial. Therefore, it would be just and proper to allow the defendant No.2 & 3 to amend their pleadings. Hence, the proposed amendment are necessary in order to determine the real controversy between the parties. In the result, I accordingly answer Point No. 1 in the affirmative.

AS TO POINT NO. 2 :

09. Considering the nature of proposed amendment and the above facts & circumstances of the case, no prejudice would be caused to the plaintiffs. Moreover, bringing the fact of enumeration of block No.1283 and its map on record by the defendants No.2 and 3 in their written statement would not change the nature of their defence. It is to be noted here that, the said changes accrued during the pendency of the suit and defendants No.2 and 3 moved the present application One year after the regular functioning of the court. Therefore, it would be just and proper to impose some costs on them for delaying in moving the application. Therefore, based on the above aspects following order is passed:

ORDER

1. The application at exhibit 148 is allowed subject to cost of Rs.500/- to be paid by defendant No.2 and 3 collectively to the plaintiffs collectively.
2. Defendant No.2 and 3 are permitted to carry out the amendment in their written statement within 14 days from the date of order, failing which the application shall stand rejected.
3. Defendant No.2 and 3 are directed to supply copy of the amended written statement immediately after carrying out the amendment.

Shirpur.
Date : 11.12.2025

(Husna R. Khan)
Jt.Civil Judge, J.D. Shirpur

CERTIFICATE

I certify that the contents of the PDF File are word to word as per Original Judgment / Order.

Name of the Steno : M. M. More
Name of the Court : Jt. C.J.J.D. & J.M.F.C., Shirpur.
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