

MHKO140000122010 	Regular Civil Suit No.7/2010 Smt.Jakubai Pandurang Gawade Vs. Nagandra Balu Haibatti
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ORDER BELOW EXHIBIT- 78

[Passed on: 07.05.2026]

1. The plaintiff has filed present application under **Order 6 Rule 17** of the Code of Civil Procedure for amendment in the plaint.
2. The plaintiff submitted that, they have filed present suit for declaration and permanent injunction. The suit properties are ancestral properties of predecessor of plaintiffs. The plaintiffs have equal share in the suit property. Mother of deceased plaintiff no.1 was not exclusive owner and possessor of the suit property,. She had no right to execute the alleged gift deed in favour of defendant in respect of entire suit property. The suit properties are ancestral and joint family property. Therefore, in order to avoid the multiplicity of proceeding and to get a suitable relief of partition and separate possession, it is necessary to add the relief of partition and separate possession of plaintiffs legitimate share in the suit property. Therefore, plaintiffs want to amend the plaint and wants to add relief of partition, amendment in title of plaint, Court fees column, pleadings and relief column. The proposed amendment is necessary in order to decide the matter on merit. It is also necessary to add the name of legal representatives of deceased

plaintiff no.1 in the genealogy. No injury or hardships will cause to the defendant if the application is allowed. On the contrary plaintiff will suffer loss and hardships if the application is not allowed. The matter is pending for evidence of plaintiff. The proposed amendment will not change the nature of suit. The relief of partition and separate possession is within limitation. Therefore, it is necessary to allow the application.

3. The learned advocate for defendants filed say at Exh.79 and raised strong objection. It is submitted that, the present application is false and filed with evil intention. The contents of the present application are false and vague. The plaintiffs have no right title and interest in the suit property. They have not possessed the suit property. They have no hereditary interest or right to make claim over the suit property. The plaintiffs are trying to prolong the hearing of suit. The plaintiffs with an evil intention, are badly taking disadvantages of the old age of the defendant. The proposed amendment will change the nature of suit and cause of action. The right accrued to the defendant will be changed. If the application is allowed it will cause prejudice to the judicial mind of this Court. The proposed amendment is not filed within limitation. Hence, the application is liable to be rejected with cost.

4. Perused the record. Heard Learned advocate for both side. Following are the points for determination along with my findings.

Sr. No.	POINTS	FINDINGS
1.	Whether the proposed amendment is	

	necessary for the determining real question in the controversy between the parties.?	Yes.
2.	What Order.?	As per Final Order.

REASONS

As to point no.1

5. As per order 6 Rule 17 of Code of Civil Procedure the Court may, at any stage of the proceeding court may allow either party to alter or amend his pleading in such manner and on such terms as may be just. All such amendment shall be necessary for the determining real question in the controversy between the parties.

The proviso to it provides that, no application shall be allowed after the trial has commenced, unless the court comes to conclusion that inspite of due diligence the party could not have raised the matter before commencement of trial.

6. In view of the aforesaid provision, it is clear that, the amendment in the plaint may be allowed at any stage. But for allowing the amendment after commencement of trial, the plaintiff has to show that inspite of due diligence he could not have raised the said fact before commencement of trial. The learned advocate Shri. S. M. Belgaonkar for plaintiff argued that, it is settled position of law that the amendment in the plaint can be allowed at any stage before commencement of trial in order to decide the matter conclusively. He further argued that, the new relief can be added in the plaint in order to avoid the multiplicity of litigation. Hence, it is prayed to

allow the application. On the other side learned advocate Shri. V. G. Desai for defendant argued that, the main suit is itself barred by The Law of Limitation and suit is filed without any cause of action. Therefore, new claim regarding partition cannot added in such suit. He further argued that, in the year 1970 the daughter had no right or share in the property. In present matter the subject matter is already disposed off and therefore suit is not tenable. It is argued that, the proposed amendment will result into prejudice and loss to the defendant. If it is allowed then it will change the nature of suit. Accordingly, it is prayed to reject the application.

7. The learned advocate for plaintiff relied on **Sampat Kumar Vs. Ayyakannu & Others {2002 SAR (Civil)854}**. *In this case the Hon'ble Supreme Court held that, Order 6 Rule 17 confers jurisdiction on the Court to allow either party to alter or amend his pleadings at any stage of the proceeding and on such terms as may be just. Such amendment as are directed towards putting forth and seeking determination of the real question in controversy between the parties shall be permitted to be made.* On the same point learned advocate relied on **Pankaja Vs. Yallappa {AIR 2004 SC 4102}**, **Surendra Kumar Sharma Vs. Makhan Singh {2009 (10) SCC 626}**.
8. In view of the guidelines of the Hon'ble Supreme Court, it is to be seen that whether the proposed amendment can be allowed in given facts and circumstances. In the present matter it is seen that the suit is filed for declaration that the gift deed dated 23/09/1971 is null void and not binding on the plaintiffs,

along with the relief of injunction. It is seen that, on 21/03/2016 issued are framed and there after the matter is fixed for the evidence. It is seen that, several applications are decided during pendency. The plaintiffs have not yet adduced evidence affidavit. Though issues are framed, but actual trial is not yet commenced. In such situation it would not be proper to reject the application on the ground of delay. Because it is necessary to see whether the proposed amendment is necessary to decide the matter effectively and conclusively.

9. It is seen that, the plaintiff has filed present suit for declaration of ownership and declaration that the gift deed is not binding on plaintiff. On perusal of the pleadings it is seen that, the plaintiff has pleaded that the suit properties are ancestral and joint family property of plaintiff. It is also pleaded that, plaintiffs have equal share in the suit property. In spite of such pleading the plaintiffs have not prayed for the relief of partition. Now by way of this application plaintiffs want to add the prayer of partition and separate possession in respect of the subject matter of the present suit. Considering the averments of plaintiff it is seen that the plaintiff is claiming to have equal share in the suit property. In such situation if the prayer of partition is added then no prejudice or loss will be caused to the other side. On the contrary it will help in avoiding the multiplicity of litigation and to decide the matter effectively and conclusively.
10. However, whether the suit is filed within limitation or not?, whether the plaintiff is entitled for declaration, partition and injunction,? Whether the suit is tenable,? These are the

questions in dispute and matter of adjudication. The burden will be on the parties who are made the averments. Hence, at this stage it would not be proper to give finding regarding entitlement of plaintiffs share in the suit property.

11. Considering the nature of amendment I am of the view that the proposed amendment will not change the nature of suit. Moreover, the burden of proof will be on the plaintiff to prove their contentions. The defendants will have opportunity to file additional written statement. At the same time it is necessary to imposed cost for causing delay. Considering the period of delay it would be proper to impose cost of Rs.1000/-. Accordingly, I pass following order.

ORDER

- a) Application is allowed subject to cost of Rs.1000/-.
- b) The plaintiffs are permitted to carry out amendment in plaint as prayed.
- c) Plaintiff to carry out amendment on or before next date without fail.
- d) Cost is payable to other-side.

Date: 07/05/2026

[Waman D. Jadhav]
Joint Civil Judge Junior Division, Chandgad.