

MHKO180003622019

**Regular Civil Suit No.90/2019.**

Prakash Narayan Namapalli

***Versus***

Ashok Narayan Namapalli &amp; Anr.

**Order below Exhibit 40.**

Defendant No.2 has filed this application for the amendment of his Written Statement as per Order 6 Rule 17 of the Civil Procedure Code (in short CPC).

02. It is the contention of defendants that, plaintiffs have filed this suit for partition and separate possession. Defendant No.2 has filed his written statement (Exh.10) on 16/07/2019. Issues have been framed below Exh.12 on 27/01/2020 which were recasted and framed on 22/09/2025. Now, in accordance with the recasted issues defendant No.2 wants to carry out amendment to his contentions in his written statement (Exh.10). The proposed amendment is formal in nature, it will not change the nature of his defence and not adversely affect the plaintiffs. He would suffer an irreparable loss, if the application is rejected. Therefore, prayed to allow the application.

03. Plaintiffs filed his say (Exh.41) and submitted that the contents of application are irrelevant, hence liable to be rejected. He submitted that, this application filed to prolong the matter. Trial of this case has been completed. Arguments have been advanced by both sides. The Court has asked the parties to adduce evidence on the additional issue, if any. In spite of adducing evidence, defendant No.2 is asking the permission of Court to

amend his written statement Such amendment cannot be allowed as per law. No subsequent event has occurred in this case to file such application. Defendant No.2 is trying to feel out the lacunas in his written statement by way of this application. Hence, it cannot be allowed. If the application is allowed plaintiff will suffer irreparable loss and prejudice would be caused to him. Hence, they prayed to reject the application.

04. Perused record. Heard learned advocate Mr. V. L. Jandagni for defendant No.2 and learned advocate Mr. D. D. Magdum for plaintiff. In view of rival contentions following points arise for my determination to which I record my findings against them with the reasons as under :

Sr. No.	Points	Finding
1.	Whether the defendant No.2 proves that despite due diligence he could not have raised the matter before the commencement of the trial?	In the negative.
2.	What Order?	Application is rejected.

### **REASONS**

#### **AS TO POINT NO.1 AND 2 :**

05. Order VI of CPC provides for 'pleading generally'. Rule 17 of Order VI provides for amendment of pleadings which runs as under:-

**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 question 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.'*

06. As per Order VI Rule 17 of CPC application for amendment can be filed at any stage. Rider which is imposed in the proviso is applicable if application for amendment is filed after trial begins. Proviso to 17 clearly shows that no amendment in pleading shall be allowed once trial has begun unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commenced of trial.

07. This is suit for partition of joint family properties. Issues are framed on 27/01/2020. Thereafter, plaintiff and defendants closed their evidence. After closing evidence matter is pending for final argument. However, while going through the record it appears that issue regarding defense of defendant No.2 in respect of this self acquired properties are not framed. As per order below Exh.1 issues are recasted and framed on 22/9/2025 as "Whether defendant No.2 proves that suit properties are self acquired properties of defendant No.2 and his father?" After recasting of issue an opportunity was given to both the sides to lead evidence, if any, on additional Issue. Despite leading evidence

defendant No.2 has filed this application. Thus, as the trial has begun the proviso to rule of 17 clearly comes in to picture.

08. Now, it has to be seen whether there is due diligence on the part of defendant No.2 while moving the application. Defendant No.2 filed his say and written statement on 16/07/2019 in which he specifically taken the defence that suit properties are purchased by defendant No.2 and his father. Now, defendant No.2 by this application wanted to add pleadings regarding suit property. It is his contention that, after purchasing suit properties in the year 1989 he had obtained loan from The Ganesh Bank Branch at Kurundwad vide deed No.342 dated 14/02/1992 for constructing house in the suit properties and completed his construction. He himself paid the loan. Therefore, the suit properties and the construction on it belong to defendant No.2 alone and the plaintiff has no right over it at all.

09. By way of proposed amendment, defendant No.2 wants to add some additional plea. In the present application there is nothing mentioned as to why such delay occurred for moving application. The contentions which defendant No.2 wants to put forth were already in his knowledge even at the time of suit and at the time of filing of his written statement. It is only contended that due to recasting of issue it is required to give details of his contention mentioned in para 5 of his written statement. He also contented that if the application is allowed the nature of written statement does not change and it will not cause prejudice to the plaintiff. There is nothing mentioned in the application as to why

defendant No.2 Could not tot raise such plea by way of amendment at or before settlement of issues. Merely because no prejudice would cause to plaintiffs is itself not sufficient for defendant No.2 to seek amendment. If the amendment is allowed certainly prejudice would cause to plaintiff as he would again have to lead additional evidence on that point. Defendant No.2 has failed to show his due diligence. It is well settled principle of law that 'Law helps those who awake and aware about their rights and not to those who sleep over their right and remain idle'.

10. In the present case also defendant No.2 remained sleeping till framing of issues, leading their evidence and even after closing their evidence. It appears that after framing of additional issue as per the defence of defendant No.2 in his written statement, the present application is moved wherein it is contented that it is required to give details about his defence. It is required to be noted that issues are framed on the basis of pleading in the plaint & written statement the material preposition of fact or of law but framing of additional issue or recast issue is not ground for amendment of pleading, otherwise every pleading will change. In view of aforesaid discussion, I find no merit in the application & same is liable to be granted, for which I pass the following order :

**ORDER**

Application stands rejected.

Place: Kurundwad.  
Date: 27/11/2025.

( V. R. Mane )  
Jt. Civil Judge Jr. Dn., Kurundwad.