

MHLA090003712001



Reg. Civil Suit No. 480/2001  
(Vitthal Vs. Tukaram & anr.)

**ORDER BELOW EXH.60**

1. This is an application filed by the plaintiff under the provisions of Order VI Rule 17 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code" for the sake of brevity and convenience) and thereby prayed for amendment in the plaint.

2. By way of instant application, the case of the plaintiff in brief is that he has instituted a suit for recovery of possession in respect of land Survey No.16/1 situated within limits of village Janapur, Tal. Udgir, Dist. Latur. He has come with a specific averments that since he being an uneducated and illiterate person and thus he could not give proper information in respect of the suit property to his advocate. Resultantly some mistakes have been occurred by oversight at the time of filing the instant suit. More particularly he has stated that instead of land Survey No.16/3 he has mentioned the Survey number of suit property as 16/1. Further, he has specifically submitted that his father had instituted a Regular Civil Suit No.72/1957 and 50/1987 and acting upon the said proceedings, he has mentioned the Survey No.16/1 wrongly. Further it is submitted that he wants Survey No.16/3 in the whole body of the plaint instead of Survey No.16/1 and in four boundaries of the suit property towards South instead of land survey No.16/1, it be corrected at 16/3. It is specifically stated that the said amendment is technical in nature and it is a correctable mistake and therefore it would not change the nature of the suit. Ultimately, he prayed to allow the application.

3. The defendants No.4 and 5 vide their say at Exh.62 have strongly objected the instant application and at the very outset submitted that the instant application being false and frivolous, it needs to be rejected with costs. They have further submitted that the instant suit is filed way back in the year 2001 and the dispute has been stretched up to the Hon'ble High Court, still the plaintiff could not get this mistake corrected herein before. The instant application is nothing but an attempt to procrastinate the instant suit. He has specifically submitted that since long the plaintiff was having knowledge about the said mistake, but he did not pay any heed before moving the instant application. Further it is submitted that proposed amendment will change the nature of the suit so also the description of the suit property. The reason put forth by the plaintiff is not acceptable. Ultimately, they have prayed for rejection of the application with costs.

4. Heard learned advocates for both sides for some time. Perused the record and documents relied upon by the respective parties.

5. Following points arise for my determination. Findings thereon and reasons therefor are as under :

<b>Sr. No.</b>	<b>POINTS</b>	<b>FINDINGS</b>
1.	In the facts and circumstances of the present matter, whether the proposed amendment is necessary to decide the real question in controversy between the parties involved in the suit ?	Yes.
2.	What Order ?	The application is allowed.

### **REASONS**

#### **AS TO POINT NO.1 & 2 :-**

6. By way of instant application the plaintiff has come with the

case that in the body of plaint and prayer clause as well due to mistakes he has mentioned the Survey number of suit property as 16/1 in stead of 16/3. He has given explanation that his father has initiated proceedings in respect of the suit property and in those proceedings survey number of the suit property was wrongly mentioned, and he has without verifying the same mentioned the wrong survey number in the instant suit as well. As against this, the defendants No.4 and 5 have strongly objected the same on the count that the plaintiff was having knowledge about the same since long.

7. In the facts and circumstances of the instant case, the law on amendment as envisaged under the provisions of Order VI Rule 17 of the Code, needs to be gone through. Before adverting to the facts and circumstances of the instant case, I would like to make it clear that vide Order VI Rule 17 of the Code, either party may be permitted to make amendments in their respective pleadings. However, such amendment shall not be permitted after the evidence is commenced unless due deligence is shown by the party seeking amendment.

8. Perusal of the record reveals that the mistake which this plaintiff wants to correct is occurred in proceedings herein before touching the instant case. He has come with the case that since he has given information to the advocate on the basis of earlier proceedings, the instant mistake being committed. The proposed amendment is backed by the 7/12 extract of the suit property. Thus, it prima facie reveals therefrom that survey No.16/3 pertains to the plaintiff and not survey No.16/1. Therefore, the reason put forth by the plaintiff seems to be justifiable to some extent.

9. In the instant case, admittedly the suit is for recovery of possession and for injunction. This suit is sent back by the Hon'ble District Court and made it time bound as well. In the instant suit though the issues

are framed herein, trial is yet to be commenced. Further the amendment sought for is of technical in nature. It would not change the nature of the suit as well. Therefore, the amendment is essential to decide the entire controversy on merits. Thus, considering the same vis-a-vis settled law on amendment vide para 70 in the case of **Life Insurance Corporation of India Vs. Sajeev Builders Pvt. Ltd. And anr. 2022 SCC OnLine SC 1128**, the instant application, deserves to be allowed. However, the delay and prejudice caused to the defendant, needs to be compensated by imposing costs. Hence, I answer point No.1 in the affirmative and in answer to point No.2 following order is passed :

ORDER

1. The application (Exh.60) is hereby allowed subject to costs of Rs.300/- to be paid to defendants No.4 and 5 on or before next date.
2. After payment of costs amount, the plaintiff to carry out amendment and file amended plaint on record.

Date : 31.07.2024

(Bhalchandra R. Zende)  
4<sup>th</sup> Jt. Civil Judge (J.D.),  
Udgir.