

MHLA090003712001



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

ORDER BELOW EXH.90

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 his pleadings.

2. By way of the instant application, the case put forth by the plaintiff in brief is that he has brought the instant suit seeking for recovery of possession of 68R land lying in land Survey No.16/3 situated within limits of village Janapur, Tal. Udgir, Dist. Latur. However since the plaintiff is an uneducated fellow having no knowledge of law, and more particular of encroachment over the suit property, he had initially sought recovery of only 68R land. According to him, pendent lite the Court was pleased to allow the application for issuance of commission to cadastral surveyor. From the report of the surveyor the encroachment to the tune of 81R land instead of 68R land is shown, and therefore to decide the real controversy between the party in the suit, such enhancement in the area of the suit property is highly solicited for. Further after the execution of consolidation scheme in their village the survey No.16/3 came to be converted into land block No.25. The plaintiff has stated that amendment in respect thereof in the entire body of his pleadings inclusive of with prayer clause is required. It is technical in nature and therefore it would not change the nature of the suit as well. Hence, prayed to allow the application.

3. The defendants vide their say overleaf to the application and

thereby taken strong exception to the instant application. They have objected the instant application on the ground that this application is filed presuming that earlier applications are going to be allowed, and therefore this application deserves to be filed. Hence, prayed for rejection of the application.

4. I have heard 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 :

Sr. No.	POINTS	FINDINGS
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 16/3 instead of Gat No.25. 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 the plaintiff have strongly objected the same on the count that the plaintiff was having knowledge about the same since long and

moving such application is nothing but to procrastinate the suit proceeding.

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 advertng 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 diligence 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 Form No.9(3) and 9(4) extract of the suit property. Thus, it prima facie reveals therefrom that survey No.16/3 converted into Gat No.25. Further the area survey No.16/3 was mentioned as 1H 10R therein against the name of Ratnabai Gundaji. Further the enhancement in area is also backed by the report of the Commissioner. Thus, the reason put forth by the plaintiff seems to be justifiable to some extent and the proposed amendment is also appear to be justifiable.

9. In the instant case, admittedly the suit is for recovery of possession and for injunction. This suit is remanded 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, just because it is an extremely old record, appears to be justifiable considering the developments in the suit. 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. Sanjeev 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.90) is hereby allowed subject to costs of Rs.300/- to be paid to the defendants on or before next date.
2. After payment of costs amount, the plaintiff to carry out amendment.
3. After payment of costs amount, the plaintiff to carry out proposed amendment and to file amended plaint on record, on or before next date.
4. Considering the long drawn pendency of the matter, it is hereby expedited.
5. Parties to take note.

Date : 13.03.2026

(Bhalchandra R. Zende)
3rd Jt. Civil Judge (J.D.),
Udgir.