



Reg. Civil Suit No.595 of 2017
(Mankarna and anr. Vs. Ashok & ors.)

ORDER BELOW EXH.64

1. This is an application filed by defendant No.1 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 written statement.

2. By way of this application case put forth by the applicant/defendant No.1 in brief is that, the instant suit has been brought against them seeking for partition in the Hindu undivided family property. In the instant case, in between the plaintiff and defendant No.1 to 6, registered partition deed came to be executed and on its strength the parties are in possession of their respective share. However, the said partitioned land came to be sold to one Ram Gundaji Gaikwad and out of the consideration amount on Vaygaon-Kumtha road 2 plots came to be purchased by executing registered sale-deed. However the suit is totally silent about the said 2 plots.

3. It is specifically averred by the defendant that while filing their written statement, they did not get copies of registered sale-deeds of those plots, and therefore they couldn't have made a point in respect thereof in their written statement. The Court by issue No.2 i.e. "Does defendant No.1 prove that registered partition of suit properties effected between plaintiff and defendant No.1, 2 and 3 to 6 in the year 2002 ? ". According to him, since the burden to prove said issue is upon him and as he got copies of registered sale-deeds on 09.02.2022, he has immediately moved the instant application. Thus, he wish to implead some pleading in respect thereof in para 3 after first 15 lines. The said amendment would not change the nature

of the suit and sought for as soon as he got knowledge of the said registered sale-deed. The instant amendment is necessary to decide real controversy involved in the parties in respect of the suit properties. Hence, the instant application moved for the relief sought for.

4. The plaintiff vide his say filed overleaf to the application itself taken strong exception to the instant application and thereby stated that the defendant has already filed written statement of his defence. Further he went on to state that after framing issues the evidence of the plaintiff is about to over. The defendant has been procrastinating the suit proceeding by moving such frivolous applications. The plaintiff has already incorporated all the joint family properties in the suit, still the instant application is moved, which is not tenable in the eyes of law. Ultimately he prayed for rejection of the application with costs.

5. I have heard Shri. B. B. Patil, learned advocate for defendant No.1 whereas Shri. P. P. Kalegore, learned advocate for defendant, for some time. Gone through the record of the suit.

6. Considering the matters before the Court, 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 case, whether proposed amendment is just and necessary for the purpose of determining the real question in controversy between the parties involved in the suit ?	Yes.
2.	Whether inspite of due diligence, the applicant could not have raised the matter before the commencement of trial ?	Yes.
3.	What Order ?	The application is allowed.

REASONS

AS TO POINTS NO.1 & 2 :-

7. Since the arguments advanced and documents relied upon these points are interlinked, they are taken together for consideration to avoid repetition and for the purpose of convenience.

8. Before advertng to the merits of the instant case, it is important to mention that the purpose and object of Order VI Rule 17 of the Code is to allow the party to alter or amend his pleadings in such a manner and on such terms as may be just and proper. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interest of justice and on the basis of guidelines laid down by the judicial precedents. The amendment in pleadings cannot be claimed as a matter of right. However, while deciding the prayer for amendment, “court should not adopt hyper technical approach”. Liberal approach should be the general rule, particularly in the cases where the other side can be compensated by imposing costs. Technicalities of law should not be permitted to hamper the Court in administration of justice. The amendments are allowed in pleadings to avoid uncalled for multiplicity of litigations as well.

9. Further, it is made clear that all the amendments which are necessary to decide the real question in controversy between the parties needs to be granted except it causes injustice or prejudice to the other side. Furthermore, it is fairly settled by catena of pronouncements that the Court has very wide discretionary powers while dealing with the cases of amendment. However, such discretion should be exercised judiciously and it should be based on sound judicial principles. The basic test governing such discretion is that whether the proposed amendment is necessary for the purpose of deciding real controversy between the parties or not.

10. With the above settled proposition of law, I would like to examine the instant case in that view point. According to defendant No.1,

the instant suit has been brought against him seeking for partition and separate possession of Hindu undivided family properties. According to defendant No.1, previously the registered partition has been taken place in between the parties and out of the property received in the said partition, by selling it out they have purchased 2 plots. The said property needs to be incorporated in the instant matter.

11. Shri. B. B. Patil, learned advocate for defendant No.1, has argued that the proposed amendment is necessary so that the real question in controversy between the parties will be decided in its entirety. He went on to submit that the plaintiff has instituted the instant suit and thereby sought for partition, therefore all the properties of the joint family needs to be incorporated in the instant matter. As against this, Shri. P. P. Kalegore, learned advocate for the plaintiffs, has strenuously argued that the proposed amendment is not at all necessary to decide the real question in controversy between the parties involved in the instant suit. He went on to submit that the evidence of the plaintiff is about to over. Further it would change the nature of the suit. Hence, prayed for rejection of the application.

12. I have given my thoughtful considerations to the arguments advanced by the learned advocates for respective parties. Thus, only a question whether the proposed amendment would is necessary to decide the real controversy in the matter and whether it would change the nature of the suit needs to be considered. On this point a landmark authority of the Hon'ble Supreme Court in the case of **Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and another (2022) 16 SCC 1** is relevant. The Hon'ble Supreme Court has summarized the general principles for amendment therein. To be more specific, vide para 71 of the said case, the Hon'ble Supreme Court has held as under :

"where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up

in the plaint, the amendment must be disallowed. Where, however, the amendments, what is only with respect to the relief in the plaint, and is predicated on facts, which are already pleaded in the plaint, ordinarily, the amendment is required to be allowed. Further, the Hon'ble Supreme Court went on to hold that where the amendment is necessary for the Court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed."

13. I have considered the case in hand in juxtaposition with the above principles summarized by the division bench of the Hon'ble Supreme Court. Admittedly the suit is for partition. By way of present application defendant No.1 wants to incorporate some property into his pleadings. On this point perusal of written statement reveals that defendant No.1 did not plead in his written statement as to the said transactions. However considering the nature of the suit that is the suit for partition vis-a-vis all the parties are equally interested in the outcome of the suit, I find that the proposed amendment is necessary to decide the real controversy between the parties in the suit.

14. I now begin to consider whether the proposed amendment is barred by the doctrine of due diligence. According to the defendant No.1, as soon as he got copies of registered sale-deed, he has moved the instant application. On this point perusal of the record it reveals that the defendant No.1 has moved the instant application immediately after getting certified copies.

15. In the backdrop of above considerations, if the instant application is considered with settled law on the amendment, it reveals that the defendant can not be much blamed for this application. Considering the observations of the Hon'ble Supreme Court in para 70 of the case of **Life Insurance Corporation of India... (cited supra)** it is made clear that all amendment applications need to be allowed to determine the real question

in controversy. However, while doing so whether the other side would cause injustice or prejudice has to be considered. Only a single witness is examined by the plaintiff, therefore the parties have right to put up their case as well. Though the trial is commenced still considering the reason put forth by defendant No.1, I hold that the instant application is not barred by the proviso to Rule 17 of Order VI. Further, I hold that in the event application is allowed, no injustice or prejudice would be caused to the other side since he is at liberty to mould his evidence accordingly. Further it would prevent the multiplicity of proceedings as well. Furthermore the proposed amendment is not barred by law of limitation as well. Since the suit is for partition, the proposed amendment would not change the nature of the suit. Therefore the application deserves to be allowed. With these observations, the application deserves to be allowed. However while doing so the protraction caused to the suit proceeding needs to be taken care of by imposing some costs upon the applicant. Hence, I answer points No.1 and 2 in the affirmative and in answer to point No.3 following order is passed :

ORDER

1. The application (Exh.64) is hereby allowed subject to costs of Rs.1000/- payable to plaintiff on or before next date.
2. After the above compliance, defendant No.1 is directed to carry out proposed amendment in his pleading on or before next date and file amended copy on record.
3. Parties to take note.

Date : 20.03.2026

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