



Reg. Civil Suit No. 498/2013
(Vasant Vs. Ashok & ors.)

ORDER BELOW EXH.103

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 simpliciter injunction. In the instant suit Court Commissioner came to be appointed and vide his report the encroachment to the extent of in toto 59R land came to be revealed. Not only this but also the concerned Commissioner has deposed backing the said encroachment of 59R. Though the suit is for simpliciter injunction still in the plaint there are foundational fact as to encroachment. Therefore they wants to made averments in respect thereof in body of the plaint and prayer clause as well by adding another relief of recovery of possession. The proposed amendment is necessary to decide the controversy involved in the matter. Hence, prayed to allow the instant application.
3. The defendants vide their say (Exh.105) to the application have taken strong objection to the instant application and thereby stated that in the instant matter the Commissioner has filed his report on 30.03.2017 and the plaintiff has filed his say thereon on 04.07.2017. Mean time the plaintiff has got amended his pleadings for thrice, however he did not sought for this amendment earlier. Thereafter in the instant matter on 13.03.2023 issues came to be framed and plaintiff has examine 5 witnesses thereafter. Therefore the instant application is barred by the proviso to Rule 17 of Order VI of the Code. The plaintiff did not state any due diligence in the application. Further

the proposed amendment would change the nature as well. Ultimately, they have prayed for rejection of the application by imposing costs of Rs.10,000/-.

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 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.	Whether the proposed amendment is barred by law of limitation ?	No.
4.	What Order ?	The application is allowed.

REASONS

AS TO POINTS NO.1 TO 3 :-

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

7. 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.

8. 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.

9. With the above settled proposition of law, I would like to examine the instant case in that view point. According to the plaintiff, he has instituted the instant suit and thereby sought for simpliciter perpetual injunction against the defendants and more particularly restraining the defendants from making further encroachment over the suit property. With this, I begin to examine what is real question in controversy between the parties in the instant suit. According to the plaintiff, he is the owner in possession of the suit property and thus he has at the inception prayed for simpliciter injunction.

10. Shri. A. A. Bhosale, learned advocate for the plaintiff, 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

relief of simpliciter injunction. However it is not a pure relief of injunction, it has a smell of encroachment and its recovery. As against this, Shri. B. V. Patil, learned advocate for defendants, 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. His direction of arguments was that the proposed amendment, in the facts and circumstances of the instant case, would change the nature of the suit and it is barred by the principle of due diligence.

11. I have given my thoughtful considerations to the arguments advanced by the learned advocates for respective parties. Thus, in the instant suit whether the possession of the plaintiff is interfered into or obstructed with at the instance of the defendants, is certainly in controversy. Not only this but also the plaintiff have in plaint para 5 has specifically averred that the defendants have encroached upon the common bandh and obstructed his peaceful possession and tried to grab the suit property. Further in plaint para 6 it is specifically averred that on 09.11.2013 the plaintiffs have accosted the defendants as to the carving out of the common bandh. Considering these facts vis-a-vis report of the Commissioner, I find that the encroachment over the suit property and its recovery are a real question in controversy between the parties.

12. It is a matter of record that in the instant suit issues came to be framed on 13.03.2023 and it came to be recast on 10.04.2024. Thereafter the plaintiff has examined in all 5 witnesses. The learned advocate for the defendants has strenuously argued that the trial is commenced, the amendment needs to be rejected. Per contra, the learned advocate for the plaintiff has submitted that vide proviso to Order VI Rule 17 of the Code, once trial is commenced no application for amendment shall be allowed unless the party seeking amendment has shown due diligence. To make his submission concrete, he has submitted that the plaintiff though having sufficient time and having knowledge since inception, still he has not

exercised due diligence. On this point, the Hon'ble Delhi High Court has reproduced the expression "due diligence" in **Chander Kanta Bansal Vs. Rajinder Singh Anand (2008) 5 SCC 117** case, the following definition from Words and Phrases, Pvt Edition, 13A, of the expression :

"Due diligence" in law means doing everything reasonable, not everything possible. 'Due diligence' means reasonable diligence; it means such diligence as a prudent man would exercise in the conduct of his own affairs."

Having relied on the above definition, the Hon'ble Supreme Court, in Chander Kanta Bansal case, defined "due diligence" as meaning "the diligence reasonably exercised by a person who seeks to satisfy a legal requirement or to discharge an obligation".

13. To show that reasonable diligence exercised by him, the learned advocate for the plaintiff has submitted that after the report received by the Court the nationwide lock-down was in force. Further meantime the earlier advocate of the plaintiff has left for heavenly abode, and therefore they couldn't have moved the instant application prior in time. Per contra, learned advocate appearing for the defendants has taken strong exception to the submissions made by his counter part and would submit that the reasons put forth by the plaintiff can not be said to be justifiable.

14. I given my thoughtful considerations to the above rival submissions. One of the point put forth by the plaintiff as to imposition of restrictions on account of surge of Corona pandemic finds justifiable, also its judicial note can be taken. Further the another point put forth as to the demise of earlier advocate is also justifiable to some extent. However it can not be said that for these two reasons the plaintiff should have kept mum for almost 9 years. Be that as it may, considering the controversy involved in the instant matter vis-a-vis reason put forth by the plaintiff showing their due diligence, finds justifiable to some extent. Thus I hold that the plaintiff has shown due diligence.

15. Further the limitation, being mixed question of fact and law, should be taken into consideration together with. On this point, the observations in para 70 of the case of **Life Insurance Corporation of India Vs. Sanjeev Builders Pvt. Ltd. (2018) 11 SCC 722** are guiding factors. I have minutely gone through this authority. In that authority, the division bench of the Hon'ble Supreme Court has held that ;

"all amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. The Hon'ble Supreme Court went on to hold that where the amendment would enable the Court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed."

16. I have considered the instant application in letters and spirit. Considering the above observations in juxtaposition with the averments made by the plaintiff, I find that the plaintiff has made averments in respect of the proposed amendment since the inception. Therefore, it can not be said that the proposed amendment would change the nature of the suit or the cause of action. Thus, I find substance in the arguments advanced by the learned advocate for the plaintiff.

17. The main point which warrants consideration is of the limitation. To bring a suit for recovery of possession the law provides limitation for 12 years. This period begins when the defendant's possession becomes adverse to the plaintiff. I have already held that the plaintiff was having knowledge about the said so called encroachment since the year 2017. Thus, if the proposed amendment is considered vis-a-vis law of limitation, I find that the proposed amendment is well within limitation. Thus, the amendment sought for can be allowed. Hence, I hold that the proposed amendment is within limitation.

18. In para 70 of the above judgment the penultimate direction is relevant to the instant case. The Hon'ble Supreme Court has held that ;

"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."

19. Considering the record and above landmark authority, at the cost of repetition, I hold that it is aptly clear that the proposed amendment is predicated on facts which are already pleaded in the plaint para 5 and 6 and is not foreign to the instant suit. Therefore, I hold that the instant application is made within the prescribed period of limitation, and therefore it is not barred by law of limitation.

20. In the backdrop of above considerations, if the instant application is considered with settled law on the amendment, it reveals that the plaintiff was having knowledge about the so called encroachment since the year 2017. 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 defendant would cause injustice or prejudice has to be considered.

21. On the point of prejudice or injustice to the defendants, at the cost of repetition, it is made clear that the proposed amendment is an outcome of the acts of the defendants which is backed by the report of the commissioner, and thus prima facie they can not be said to be at fault for this amendment. Hence, in such circumstances no plaintiff should be blamed. It is an outcome of the encroachment found in the report of the commissioner, and in respect thereof there are foundational facts in plaint para 5 and 6. Further the commissioner has deposed in respect thereof. Thus, it can be said that the

defendants will not cause prejudice or injustice if the plaintiff is allowed to amend the plaint as prayed. Thus, I hold that in the event application is allowed, injustice or prejudice would not be caused to the defendants. Further the nature of the suit will not be changed as well. Therefore the application deserves to be allowed. However while doing so the protraction caused to the smooth progress of the matter and prejudice to the other side needs to be taken care of by imposing hefty costs. For these reasons, I answer points No.1 and 2 in the affirmative and point No. 3 in the negative and record my findings accordingly. In the result, in answer to point No.4 following order is passed :

ORDER

1. The application (Exh.103) is hereby allowed subject to costs of Rs.1,500/- to be paid to the defendants on or before next date.
2. The plaintiff to pay requisite court fees on newly added relief of recovery of possession.
3. After payment of costs and court fees on another relief, 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.