


MHLA160000772009 	<u>R.C.S.No.59/2009</u> <u>Shakuntalabai Vs. Venkat & Ors.</u>
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-:: ORDER BELOW EXH.108 ::-

This is application for amendment in the plaint under Order VI Rule 17 of the Code of Civil Procedure.

2. The plaintiff submitted that, the defendant Nos.2 to 12 are added in this suit, vide order dated 15/12/2025 below application (Exh.82). Therefore, it is become necessary to amend the plaint and add requisite pleading to clarify the role of newly added defendants. Therefore, the plaintiff want to add pleading in respect of alleged transactions of defendants. The proposed amendment will not change nature of suit. It is bonafied amendment. She prayed to allow the application.

3. On behalf of the defendant Nos.1 to 3 Advocate D.T. Patil opposed this application and submitted that this application is barred by limitation under Article 59 of the Limitation Act. The plaintiff has filed village form No.7/12 at the time of filing the suit. Therefore, the plaintiff was aware about revenue entries and alleged transactions since the date of suit. The plaintiff has ever chance to claim the proposed amendment in the amendment application (Exh.43) and application (Exh.82). But she failed to the same. The nature of suit will change in case of allow the application. He prayed to reject the application.

4. The defendant Nos.4 to 12 failed to file say and argue this application, inspite ample opportunity and time.

5. I have carefully gone through available record. The following points are arose for determination. I record my finding and reasons thereon as under -

S. No.	POINTS	FINDINGS
1	Whether proposed amendment is necessary to determine real question and controversy between parties ?	... Yes.
2.	What order ?	As per final order.

POINT NOS.1 AND 2 :

6. Leaned advocate Shri. Bodake for the plaintiff and learned Advocate Shri. D.T. Patil for defendant Nos.1 to 3 argued on the pleadings at length.

7. I have carefully gone through the record and argument. This is suit for partition, possession of share and perpetual injunction to restrain further alienation of suit property. This suit was filed on 01/01/1999. It was decreed on 06/08/2011. Thereafter, the Hon'ble High Court remanded this suit to decide a fresh within five months as per order dated 25/09/2025 passed in Second Appeal No.539/2021. Thereafter, the plaintiff has added defendant Nos.4 to 12 in this suit vide order dated 15/12/2025 below application (Exh.82). Accordingly, the pleadings against defendant Nos.4 to 12 and their transactions are necessary to decide controversy between

parties and real question of the suit. It will not change nature of suit or prejudice to the defendant. It will helpful to determine the entitlement of the reliefs and rights & liabilities of the parties.

8. An article 59 of the Limitation Act provided limitation of three years to cancel or set aside an instrument or decree or for rescission of contract, when the facts entitling the plaintiffs to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him. That provision is applicable to the suit and not to the amendment application. Similarly, the village form No.7/12 filed by the plaintiff disclosed entry of the persons other than defendant Nos.1 to 3. It has established plaintiff's knowledge in respect of the revenue entries. But the limitation of the suit or merits or demerits of the suit shall not be considered while deciding this application. No doubt, it is a part of final decision of the suit. Hence, defendant's argument is not accepted.

9. After remanded the suit, I have framed issues on 18/10/2025. The suit is fixed for evidence of the plaintiff. Hence, trial of suit is yet not commencement. But there is delay on the part of the plaintiff for claiming the amendment. Those delay is not good ground to reject the application. It can be compensated in term of money.

10. The suit property transferred to defendant Nos.4 to

12. Therefore, the proposed amendment is part of the suit and in form of explanation in support of the claims/reliefs. It is necessary to determine real question between parties and decide the suit on merit. It will not change nature of the suit. An opportunity is backbone of justice. If it is refused, there is apprehension of miscarriage of justice. Allowing the proposed amendment will not prejudice to the defendants. They have ample opportunity to contest the suit and raised every defence which are available to them. The application deserved to be allowed subject to costs. Hence, I answered point No.1 in affirmative and in answer of point No.2, I pass following order.

-:: ORDER ::-

- 1) The application is hereby allowed subject to costs of Rs.1500/-, payable to the defendants in the interest of justice.
- 2) The plaintiff shall amend the plaint and add proposed amendment till next date vide Order VI Rule 17 of the Code of Civil Procedure.
- 3) Both parties shall expedite the suit.
- 4) Order dictated on computer and pronounced in open court.

Date : 12/01/2026.

(S.A. Surjuse)
Civil Judge Junior Division,
D e o n i.