

MHNS130003022025**REG. CIVIL SUIT NO. 51/2025****Hirachand V/s Sukhdev****ORDER BELOW EXH. NO.44**

The present application is filed by the plaintiff for amendment of plaint vide Order VI, R.17 of the Code of Civil Procedure, 1908. The application is opposed by the defendant no.1 and 2 by filing their say at Exh.No.50.

02] Perused application and say. Learned advocate Shri. R.T. Chavhan appearing for the plaintiff submitted that, plaintiff has filed present suit for perpetual injunction with the pleading that plaintiff is in lawful possession and he should not be dispossessed without due process of law. In earlier suits in respect of same subject matter, it is finally decided by Hon'ble High Court and Supreme Court that plaintiff is in possession. And thus, plaintiff instituted this suit for perpetual injunction restraining defendants from obstructing lawful possession of plaintiff. However, defendant no.1 and 2 appeared and filed their W.S. claiming possession over the suit property. He further submitted that, Exh.5 is decided on merit and allowed in favor of plaintiff which is still in existence. By way of amendment plaintiff wants to plead further about adverse possession and wants to add prayer of declaration of ownership by adverse possession. He further submitted that the proposed amendment is necessary to decide the real question in controversy between the parties. Hence, he prayed to allow the application.

03] On the other hand, defendant no.1 and 2 have denied all the contentions of the application. Defendants have denied possession of plaintiff over suit property and claimed their possession. Ld. advocate Shri. S.G. Gade appearing for defendant no.1 and 2 submitted that, proposed

amendment changes the nature of the suit and thus if allowed it would cause prejudice and hardship on the rights of the defendants. He further argued that, plaintiff could have raise the matter at the time of institution of the suit. Despite that plaintiff has moved this application at belated stage. He argued that in present suit issues are framed at Exh.No.42 and the matter is for plaintiff's evidence. Plaintiff by taking help of earlier decisions trying to bring something which he never pleaded or claimed for. Also, no decree or order showing plaintiff's possession is passed in earlier decisions.

04] He further submitted that, trial is already commenced and thus application is time bared. He further argued that, earlier two suits i.e. R.C.S.No.160/1978 and R.C.S. No.153/1992 were instituted. In both the suits plaintiff had right to file or claim his adverse possession, however he did not file any of his contentions in those suits. He never raised theory of adverse possession ever and thus proposed prayer is also time bared. Therefore, he cannot ask for proposed amendment at this stage. He argued that present application is filed by plaintiff without any due diligence and to prolong the matter. Accordingly, he prayed for rejection of the application.

05] Heard learned advocates of both parties. Considered their submissions. Points for determination along with my findings thereon, for the reasons are as under:

Sr. No.	<u>Points for determination</u>	Findings
1.	Whether the proposed amendments need to be allowed?	Yes.
2.	Whether the proposed amendment changes nature of the suit?	No.
3.	What order?	Allowed.

:: REASONS ::

AS TO POINT NOS. 1 AND 2:

06] As these points are interconnected, I have taken them together for discussion in order to avoid repetitions of facts. Ld Adv. Shri. R.T. Chavan appearing for the plaintiffs argued that, though issues are framed, it cannot be considered as commencement of trial. He submitted that, suit is filed in the year 2025 and application is move immediately after issues are framed. Trial is yet to commence and thus application is not time bared. To support his contentions, he has referred legal articles published by SCC times online in which Hon'ble Bombay High Court and Hon'ble Apex Court discussed at what stage does civil trial commence while applying to proviso to Order VI Rule 17 of the Code of Civil Procedure, 1908?

07] On the other hand, Ld. Advocate Shri. S.G.Gade for the defendants argued that, after framing of issues it is deemed that suit has been commenced and therefore after commencement of trial no such amendment is permissible by law. To support his submissions, he has filed citation of Hon'ble Supreme Court in the matter ***Rebbanamonai Aanand @ Santhapuram Aanand V/s Santhapuram Aanand Reddi Civil Appeal no.9632/2025 Dtd.21/07/2025.***

08] I have carefully gone through the record and the ruling cited. As per O.6 R.17 of The Code of Civil Procedure the court may at any stage of the proceeding allow either party to alter or amend his pleading in such manner and on such terms as may be just and such amendments shall be made as may be necessary for the purposes of determining the real question in controversy between the parties. However, no such application shall be allowed after commencement of the trial unless the court comes to the

conclusion that in spite of due diligence the party could not have raise the matter before the commencement of trial.

09] Commencement of trial is generally taken as the stage when issues are framed and recording of evidence begins. The record reveals that issues are framed at Exh.42 on 02.05.2025. Thereafter, on 29.07.2025, the plaintiff moved an application at Exh.43 for taking the suit on board along with the present amendment application at Exh.44. It is pertinent to note that the plaintiff has not yet filed his affidavit of evidence on record. Though framing of issues is one of the requirements for commencement of trial, the commencement of trial cannot be said to have taken place merely upon framing of issues. It also requires the beginning of the recording of evidence and recording of evidence is considered to have commenced when the plaintiff enters the witness box for examination and/or cross-examination.

10] In the present case, although issues have been framed, the plaintiff has not yet entered the witness box. Immediately after framing of issues, the plaintiff moved the present amendment application. The suit is still at the stage of leading evidence, where the plaintiff is yet to file his affidavit of evidence. Therefore, the proviso to Order VI Rule 17 of the Code of Civil Procedure, which requires the plaintiff to establish due diligence after commencement of trial, is not attracted in the present case. And hence, ruling cited by learned advocate appearing for defendants with due respect is not applicable to present facts of the case.

11] Order VI Rule 17 permits the parties to correct mistakes or errors in their existing pleadings. It also allows the introduction of new facts that were not pleaded earlier. By way of the present amendment, the plaintiff seeks to incorporate pleadings regarding adverse possession and a

consequential prayer in that regard. On perusal of the proposed amendment, it prima facie appears that the same relates to the suit property and arises out of the existing dispute between the parties. The plaintiff has already pleaded his possession over the suit property and has sought the relief of perpetual injunction. By way of the present amendment, he seeks to elaborate upon the nature of such possession by raising a plea of adverse possession.

12] The plaintiff is asserting facts constituting adverse possession and, therefore, the burden of proving those facts lies upon him. The defendants will have full opportunity to contest the amended pleadings and to cross-examine the plaintiff on all aspects of the proposed claim. Considering that the subject matter of the suit and the parties to the proceedings remain unchanged, this Court finds that the proposed amendment is necessary for determining the real controversy between the parties.

13] The contention of the defendants that the plea of adverse possession is barred by limitation and that such plea was not raised in earlier proceedings pertains to the merits of the proposed amendment. At the stage of deciding an application under Order VI Rule 17 of the Code of Civil Procedure, the Court is not required to adjudicate upon the correctness, truthfulness or ultimate sustainability of the proposed pleadings. Whether the plaintiff has perfected title by adverse possession and whether such claim is legally maintainable are matters to be decided upon evidence during trial. Therefore, these objections cannot be a ground to refuse the amendment at this stage.

14] So also, delay in making application cannot be the sole ground for rejection. This court finds that this is not the case where through

amendment a new case will be introduced which will prejudicially affects the defendants. The present suit is for perpetual injunction; wherein legal rights of plaintiff are involved. The proposed amendment is in respect of the facts. Hence, considering the nature of the suit and nature of proposed amendment, I am of the view that proposed amendment is necessary to decide the real question in controversy between the parties.

15] Though the amendment introduces an additional relief of declaration based on adverse possession, the same arises out of the plaintiff's existing claim of possession over the suit property and concerns the same subject matter between the same parties. Therefore, the basic structure and identity of the suit are not altered. The defendants will get an opportunity to challenge the amendment and hence no prejudice will be caused to them. Therefore, in order to avoid further litigations this application deserves to be allowed. At the same time delay and inconvenience caused can be compensated. Under such circumstances, I answer to the **point no.1** in **affirmative** and **point no.2** in **negative** and as an answer to **point no.3**, I pass following order:

ORDER

1. Application is allowed, subject to cost of Rs.500/- which is to be paid to defendants on or before next date.
2. Plaintiff is permitted to carry out the necessary amendments on payment of costs imposed.
3. Proposed amendments shall carry out and plaintiff shall file copies of amended paint within 14 days from this order.

Sd/-xxx

Dated : 25/06/2026

(V. W. Khendad)
2nd Jt. Civil Judge, Junior Division,
Pimpalgaon(B). Dist.Nashik