

1.

Spl Civil Suit No. 9/2023

Dwarkanath Mundada
V/s.
Dipak Mundada & ors

ORDER BELOW EXH. 128

The plaintiff has moved this application under Order VI Rule 17 of the Civil Procedure Code, 1908.

02. Defendants have filed at Exh. 130. Perused the application, say and record of the case. Heard both Learned Advocates.

03. By proposed amendment, plaintiffs seeks to explain the admission made in the cross-examination regarding the possession and proposes to incorporate an alternative relief of recovery of possession.

04. The suit is of the year 2010. The trial has concluded and the defendants have already advanced their final arguments. Order VI Rule 17 CPC permits amendment of pleadings where such amendment is necessary for determining the real questions in controversy. However, after commencement of trial, the proviso mandates that no amendment shall be allowed unless the Court comes to the conclusion that, despite due diligence, the party could not have raised the matter before commencement of trial.

05. The amendment is sought on the basis of the plaintiff's own admission in the cross-examination dtd. 12/11/2021. The defendant had also consistently pleaded from the beginning that it is in possession of the suit property. Thus, the relevant facts were well within the plaintiff's knowledge. No satisfactory explanation is offered for not seeking the amendment earlier.

06. Further the proposed amendment introduces a substantive relief of possession, which would enlarge the scope of the suit and necessitate re-opining of the trial, thereby causing prejudice to the defendants. In view of the mandatory proviso to Order VI Rule 17 of CPC, the application cannot be allowed. In the result, I pass following order ;

ORDER

- 1) The application is rejected.
- 2) No order as to costs.

Date : 04.08.2026

(M. D. Nanaware)
Civil Judge Senior Division,
Igatpuri.

CERTIFICATE

I affirm that the contents of this P.D.F. file Order are same, word to word, as per the original Order.

Name of Stenographer : Smt. V.R. Balkawade,

Court : Civil Judge, Sr. Division, Igatpuri,

Date : 04.08.2026

Order Signed by the
Presiding Officer On : 04.08.2026

Order Uploaded on :04.08.2026