

RCS No.83/2014

Chandmal Kumat Vs.
Sanjay Shinde & ors.

ORDER BELOW EXH.58

The present application is filed for seeking amendment in the plaint under Order VI Rule 17 of the Code of Civil Procedure, 1908 (In short, CPC) by addition of proposed defendants No.3 to 9.

Facts of the application in nutshell :-

02 The present suit is filed for declaration and perpetual injunction. The suit is filed in the year 2014. It is averred by the plaintiff that during pendency of present suit, both parties are approached for compromise between themselves. However, other family members of defendant No.1 and co-owner of suit properties are not added in the title clause of the suit. It is also stated by the plaintiff that proposed amendment is for initiating compromise between both parties and final settlement of dispute between them. Hence, he prayed for addition of proposed defendant No.3 to 9 in the present suit and for other consequential amendments.

03 The Ld. Advocate for the defendants filed their say on overleaf of the application and contended that ground for said amendment are baseless which are required to be carried out at stage of institution of present suit. Hence, they prayed for rejection of application.

04 I have perused the application and heard Ld. Advocates for both parties. Considering averments in the application and documents on record, following points arose for my determination and my reasoned findings to them are as follows :-

Sr. No.	Points	Finding
1)	Whether the proposed amendment changes the nature of suit ?	No.
2)	Whether the application of amendment is required to be allowed ?	Yes.
2)	What order ?	Application is allowed.

REASONS

As to point Nos.1 and 2 :-

05 As far as the amendment of the pleading is concerned, Order VI Rule 17 of the CPC provides that, *the court may at any stage of the proceedings allow either party to alter or amend his pleading in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purposes of determining the real questions in controversy between the parties.* Proviso to Rule 17 further provides that, *no application for amendment shall be allowed after the trial has commenced, 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.*

06 Order VI Rule 17 consists of two parts. The first part is discretionary (may) and leaves it to the court to order amendment of pleading. The second part is imperative (shall) and enjoins the court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties. It is true that though an amendment cannot be claimed as a matter of right under all circumstances, yet the power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interest of justice.

07 In the backdrop of above legal position, it is necessary to analyse facts and circumstances of the present case. The main suit is filed by the plaintiffs for declaration and perpetual injunction. The proposed amendment is required to be carried out as it relates with effective adjudication of subject matter in dispute between parties. Moreover, it appears that, the real nature of suit does not change by proposed amendment. Proposed amendment needs to be carried out by the plaintiff and no prejudice would be caused to the defendants. Accordingly, I answered point No.1 in negative and point No. 2 in affirmative and in answering to point No.3, I pass following order :-

ORDER

- 1) The application at Exh.58 is allowed.
- 2) The plaintiff is directed to carry out proposed amendment in the plaint by adding name of proposed defendants No.3 to 9 and other consequential amendments are to be carried out and file copy of amended plaint on or before next date.

Date: 15/06/2023

(S. G. Kuvalekar)
2nd Jt. Civil Judge, Jr. Division
Igatpuri.