

MHPA210005862017



ORDER BELOW EXH.60 IN
R.C.S. NO.191 OF 2017,
CHANDRAKALA VS. VISHWANATH & OTHERS,
[PASSED ON 01/10/2025]

This is an application filed by the plaintiff for seeking amendment in the plaint as per Order VI Rule 17 of the Code of Civil Procedure, 1908.

02. Considering the contentions of rival parties following points arise for determination and my findings against each of them for the reasons are given below:-

Sr.No.	Points for determination	Findings
1.	Whether the proposed amendment is just and necessary determine the real controversy between the parties ?	Yes.
2.	What order?	As per final order.

REASONS

POINT NO. 01 and 02 :-

03. The learned advocate for the plaintiff submitted that the instant suit is filed for the declaration and recovery of possession of encroached land. On 21/03/2018 the applicant filed an application for appointment of Court Commissioner. Thereafter, by passing necessary order T.I.L.R. Sonpeth is appointed for joint measurement

of the suit property. After measurement T.I.L.R Sonpeth filed a report and map. On perusal of the same, it appears that defendant No.03 Sunil Bankatrao Puri and defendant No.04 Bharat Narayan Tak encroached 15 R and 09 R land of the plaintiff.

04. He further submitted that, during pendency of suit on 27/05/2024 by way of sale deed No.653/2024 defendant No.04 Bharat Tak sell out entire land in Gat No.38/A to one Vidya Balaji Pawar. Defendant No.04 Bharat Tak encroached over 09 R land of the plaintiff. Encroached land is still in the possession of the defendant No.04. With this background the plaintiff prayed for amendment in the plaint. It is further submitted by the plaintiff that, at the time institution of the suit he was not aware about the exact area of the encroached. Now by way of the subsequent event the actual area of the encroachment is brought on record by the T.I.L.R. Sonpeth.

05. Thus, it is necessary by adding Vidya Pawar as proposed defendant to correct the boundaries of the suit property and mentioned the specific description of the suit property. The plaintiff want to amend in claim clause No. 04 from Eastern side as Vidya Balaji Pawar instead of Bharat Narayanrao Tak and also amend in claim clause No.02 as defendant No.02 Vidya Balaji Pawar instead of

Bharat Narayanrao Tak. It is further submitted that, in case of allowing the instant application no prejudice would cause to the defendants. Moreover, the proposed amendment would not change the nature of suit. Based on these submissions the plaintiff prayed to allow the application.

06. Report vide Exh. 64 shows that, the proposed defendant Vidya Pawar failed to appear in the suit despite service of summons. Thus, this application is proceed without her say.

07. Before dealing with the proposed amendment, it is necessary to see the provision under order VI rule 17 of the Code of Civil Procedure, 1908. On careful reading of the aforesaid provision, it is seen that, the court at any stage of the proceeding allow to amend the pleading subject to satisfaction of the court, that the proposed amendment is just and necessary for the purpose of determining the real controversy between the parties.

08. It reveals from the record that the suit is filed for the declaration and recovery of possession by removal of encroachment. In order to decide the real controversy between the parties proposed amendment is just and proper to ascertain the suit property. The object of the Order VI Rule 17 is to determine real controversy

between the parties. It is seen that there is dispute about the landed property and valuable rights of the parties are involved therein. The proposed amendment is seems to be correct regarding description of the suit property. Thus, this application needs to be allowed. Indeed, this application is filed at belated stage and caused inconvenience to the defendant. However, it can be compensated by imposing compensatory cost as contemplated under Section 35-B of the Code of Civil Procedure. Thus, I deem it appropriate to direct the plaintiff to pay cost of Rs. 1000/- to T.L.S.A. Sonpeth towards causing delay in the proceeding. In view of the aforesaid discussion points No. 1 and 2 are answered in the affirmative and following order is passed.

ORDER

- 1) The application below Exh.60 is allowed.
- 2) The plaintiff is directed to correct the description of the suit property and made necessary amendment within period of 14 days from the date of this order.
- 3) The plaintiff is directed to pay an amount of Rs.1000/- to T.L.S.A. Sonpeth towards cost as per Section 35-B of the Code of Civil Procedure.
- 4) Accordingly the instant application is disposed off.

(Dr. A.Z. Sayed)

Civil Judge Junior Division,
Sonpeth.

Date :- 01/10/2025.