

CNR NO. MHPU100001812023



IN THE COURT OF CIVIL JUDGE (JR. DN.) P.C.M.C. COURT AKURDI, PUNE.
R.C.S. No. 70/2023
<u>Mubarak Abbas Shaikh</u>
-Vs-
<u>P.C.M.C. & Ors.</u>

ORDER BELOW Exh. 50.
(Passed on 07.11.2025)

This is an application filed by the plaintiff under Order-6 Rule-17 of the Code of Civil Procedure, 1908 (For the sake of brevity hereinafter will be called as “C.P.C.”) for amendment in plaint.

2. Called say of defendants. Defendant no. 1 to 4 have given their say behind the same application. Defendant no. 5 filed his say below Exh. 56.

3. Counsel for plaintiff submitted that, initially they have filed the suit against defendant no. 1 to 4, afterwards defendant no.5 have applied as a third party for join to them in array of defendant, which was allowed. Thereafter, defendant no. 5 filed their written statement. Counsel for plaintiff further submitted that, defendant no. 5 have raised various legal and factual points. Therefore, now it is necessary to amend in the plaint and wants to add proposed para no.

40 to 61 which is important and connected to the suit property. Therefore, lastly he prayed for to allow the application.

4. Counsel for defendant no. 1 to 4 have strongly opposed the application. They submitted that, if proposed amendment will be allowed then the nature of the suit will be changed. Lastly they prayed for the reject the application with heavy cost. Defendant no. 5 raised objection that, without arguing on Exh. 5, the plaintiff have moved this application. Plaintiff have no locus standi to file such application. The plaintiff have no connection to the suit property. Moreover, there is no partition have been effected on dated 27/09/1994. Hence he prayed to reject the application with heavy cost.

5. Heard learned counsel Shri. K. A. Ashrafi for plaintiff, learned counsel Shr. M. G. Bhapkar for defendant no. 1 to 4 and learned counsel Shri. C. S. Gaikwad for defendant no. 5 at length. The following points arise for my consideration. My findings thereon are as follows with following reasons.

S. NO.	<u>POINTS</u>	<u>FINDINGS.</u>
1.	Whether the proposed amendment is necessary for resolve the controversy between the parties?	... Affirmative.
2.	What order ?	... As per final order.

REASONS

6. AS TO POINT NO.1 and 2 :

Considering the material on record I have taken point no. 1 to 2 together, for discussion. Before going into the discussion, I would like to mention here the provision O.6 R.17 of CPC.

Order VI Rule 17 Amendment of pleadings:- *The Court may at any stage of the proceedings allow either party to alter or amend his pleadings 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 determine the real questions in controversy between the parties:*

Provided 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 raised the matter before the commencement of trial.

7. Perused whole record. It seems that, suit is filed for declaration and permanent injunction. It is admitted fact that, initially the suit was filed only against defendant no. 1 to 4 and afterwards defendant no. 5 was added in array of defendants. It is also not disputed that, defendant no.5 is real father of plaintiff and plaintiff is elder son of him. After joining in the array of defendants to defendant no.5, he have put-forth some facts which is related to the plaintiff and suit property.

8. Now, the plaintiff wants to disclose and to give explanation in respect of such facts. The issues yet to be framed and trial has not been commenced. I think considering the facts and

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circumstances of this case it is desirable to allow the proposed amendment by way of adding para no. 40 to 61 in the plaint. The counsel for defendant no. 5 has raised objection in respect of suit property is not belonging to plaintiff, in regard of partition deed, no rights of plaintiff, Will etc. If the plaintiff have raised any issues or relied on some documents then, it is duty of him to prove it. As such if plaintiff whatever pleaded then, he should be care to prove and every opportunity will be available to defendants to rebut it. The proposed amendment is not hurdle or change the nature of suit.

9. Therefore, for the ends of justice and for proper adjudication of trial and to decide the real controversy between the parties in dispute, application is entitled to be allowed. There is no harm to the defendants. Hence, I answer point no. 1 in the affirmative and for point no. 2, I proceed to pass the following order:

ORDER

- 1) The application is hereby allowed.
- 2) The plaintiff is directed to carry out amendment and file the amended copy of plaint on record till next date.

Dated: 07/11/2025.

Sd/-xxx
(V. S. Damare)
Civil Judge Junior Division
(P.C.M.C. Court), Akurdi, Pune.

CERTIFICATE

“I affirm that the contents of this P.D.F. file Order are same word for word as per original Order”.

Name of Stenographer :- P. B. Jadhav

Court Name :- Shri. V. S. Damare,
(J.M.F.C.) Civil and Criminal Court (P.C.M.C.),
Akurdi, Pune.

Date :- 07/11/2025

Order signed by
presiding officer on :- 07/11/2025

Order uploaded on :- 07/11/2025