

MHRT070009562021



RCS No. 55/2021

Dattatraya Shivaji Desai

V/s

Shashikant Laxman Shinde, etc.

Order Below Exh.57

This application is filed by the power of attorney holder of the plaintiff to amend her pleadings under order VI rule 17 of the Code of Civil Procedure, 1908.

2) **The brief statements of the application are as follows,** the plaintiff has filed this suit for a declaration and perpetual injunction in respect of the property Survey No.203 Hissa No.3/6 in which C.T.S.No.6235/5 area 338 Sq.mtrs is situated. The application for temporary injunction has been decided on the previous date. Taking disadvantage of this, the defendants have constructed a concrete wall between the building indicated by the no.1 and 2 in the map attached to the plaint. Due to the said act, it has become impossible for the plaintiff to use suit property. Hence, the present application for amendment has been filed. Due to such amendment, the nature of the pleadings does not change. This amendment does not cause any loss or injustice to the plaintiff. But if the application is not allowed the plaintiff will suffer irreparable loss. So, in the interest of justice this application should be allowed and the plaintiff should be permitted to carry out proposed amendment in her pleadings.

3) Say has been filed on Exh.62 on behalf of the defendant no.1. The temporary injunction application has been rejected on 28/01/2025. Therefore, the plaintiff has no right and authority to

file such an application again. Basically, the entire purpose of the suit has been destroyed because the defendant has built a wall for protection. At that time, when the said wall did not exist, the wild cattle came from that place and entered the area of the defendant as well as the plaintiff and caused damage, so the said wall was built by the defendant. Therefore, such an application has been filed by the plaintiff deliberately to cause unnecessary trouble to the defendant. The plaintiff has no reason to file the present application. Hence, this application should be rejected.

4) On perusal of the application and material available on the record following points are relevant while considering merits of this application and findings are recorded as follows.

No.	POINTS	FINDINGS
1.	Whether this amendment is necessary for the purpose of determining the real questions in controversy between the parties ?	In the affirmative
2.	What order?	Allowed

REASONS

AS TO POINT NO.1 and 2 –

5) The plaintiff has filed this suit for declaration, perpetual and mandatory injunction. The defendant no.1 and 2 have filed a written statement Exh18. Accordingly, on 28/01/2025 application for temporary injunction was rejected and issues are settled on Exh.56. Looking at rival pleadings and the paragraph seeking the

proposed amendment, the Hon'ble Supreme Court in **Life Insurance Corporation of India V/s. Sanjeev Builders Private Limited and another 2022 SCC OnLine SC 1128** held that all amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. The Hon'ble Supreme Court laid down certain guiding principles there too. The prayer for amendment is to be allowed if the amendment is required for effective and proper adjudication of the controversy between the parties, and to avoid multiplicity of proceedings. In dealing with a prayer for amendment of pleadings, the court should avoid a hyper-technical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs. Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed. Delay in applying for amendment alone is not a ground to disallow the prayer.

6) The Hon'ble Supreme Court has further guided that, where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed.

Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed.

7) Order VI rule 17 of the Code of Civil Procedure, 1908 talks about 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 purpose of determining the real questions in controversy between the parties. Even if proviso to Rule 17, as inserted by the Code of Civil Procedure (Amendment) Act, 2002 restricts and curtail power of the court to allow amendment in pleadings by enacting that no application for amendment should 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 the trial.

8) So, considering the above guidelines and the pleadings that have come up, oral and documentary evidence has not yet been started in this suit. The defendant no1 has constructed wall while the suit is pending. In **Sampath Kumar V/s Ayyakannu (2002) 7 SCC 559** and **Aasma Abdul Majeed and another V/s Jayram Arjun Tisge and others 2000(1)BomCR 74** held that an amendment, based on subsequent event is permissible and such an amendment may be necessary to avoid multiplicity of proceedings. Although temporary injunction application was rejected the amendment as requested by the plaintiff is allowed in its present form, it will not make any difference to the pleadings already made in the plaint.

In the event of such an amendment being granted the defendants will be entitled to file their additional written statement and raise any contentions as are available to them in accordance with law. Hence, the proposed amendment is necessary for the purpose of determining the real questions in controversy between the parties. So, findings of point no.1 are recorded in the affirmative and as per above findings the following order is passed for point no.2...

ORDER

1. This application is allowed.
2. The plaintiff should carry out this amendment within 14 days from today.
3. An amended copy should be filed on record immediately.

(Typed, Printed and Pronounced in open court.)

Place: Chiplun

Date : 02/05/2026.

(Yuvraj Chandrakant Patil)
Jt. Civil Judge Junior Division, Chiplun

:-Certificate :-

I Affirm That The Contents Of This Order And The P.D.F File Of This Order Are Same, Word To Word, As Per The Original Order.

Name Of Stenographer	Shri.M.E.Arekar
Name Of Court	Jt. C.J.J.D.& J.M.F.C.,Chiplun
Date Of Decision	02/05/2026
Order Signed By The P.O. On	02/05/2026
Order Uploaded On	02/05/2026