

Order below e application Exh.188 in RCS 8/2012
Manik Vs Sakharam & Ors

The application is under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (the C.P.C).

2 Perused the application, say (Exh.191, & 193), and the record.

3 Heard, both the sides.

4 The suit is for partition, and other consequential reliefs. The contesting defendants have filed their written statement cum say below Exh.85, 91, 97, and 106. The suit is posted for cross examination of defendant 3's witness.

5 The application is premised on the ground, that the suit is for partition in respect of the scheduled properties. Due to inadvertance some of the properties remained to be incorporated and it has been mentioned in the plaint that leave under Order 2 Rule 2 of the CPC may be granted or has been reserved. Defendant 2 Madhukar, has purchased a property from the joint family income on the name of his son who is defendant 7 and some property has been gifted. The properties purchased on the name of defendants 2, 7, 8 are out of the joint family income and therefore, consequential amendment in the plaint more particularly mentioned in para 5 of the application has been sought for.

6 The application is opposed on the ground, that there is no due diligence. The delay cannot be condoned. The nature of the suit would be changed. The suit property bearing CTS 717/1B has been purchased by defendant 8 Abhijit out of his business of spare parts and other business. The survey Nos.25 and 26, and the house bearing No.207 situated at Mauje Sus, Tq.Mudashi, Dist.Pune are the self acquired properties of Mayur defendant 7. The suit bearing RCS 109/2018 is pending consideration. Further, the application is opposed that the properties may not be corporated for want of a joint family nucleus. Hence, the application is opposed.

7 The following points arose for my determination to which I record my findings together with the reasons thereof.

Sr.No	Points of determination	Findings
1	Whether the proposed amendment, is necessary for deciding the real controversy between the parties under Order 6 Rule 17 of the C.P.C?	Yes

2	Whether there is due diligence on the part of the plaintiff?	Yes
3	What order?	As per the final order

Reasons

Points 1 and 2

8 It is settled law that pre-trial amendment has to be liberally allowed. Further, the proviso to Order 6 Rule 17 of the CPC controls Order 6 Rule 17 of the CPC. Unless the application qualifies the test of due diligence, the post trial amendment may not be allowed.

9 As a matter of fact and record, the suit is for partition. The stage in the matter is of evidence of defendant 3's witness/cross examination. Admittedly, there is delay in moving the instant application. Defendants 2, 7 and 8 have sought amendment in their pleadings and which has been allowed vide order below Exh.177.

10 On perusal of the application, it has been mentioned that due to inadvertance the application cannot be filed at the earliest. Further, the leave under Order 2 Rule 2 of the CPC has been reserved. If the facts are considered from the angle, that whatever may be the contention of the plaintiff of having purchased the properties out of the joint family funds/ nucleus and the contesting defendants of the theory of self acquired one, the fact remains for if a new suit is filed, the costs of litigation can be saved. Both the parties have opportunity to lead evidence. Inadvertance may qualify the test of due diligence for the plaintiff may not gain anything. The suit is of 2012 and has to be disposed of at the earliest. Admittedly, the plaintiff is delaying the suit and its logical end, the fact remains the controversy revolves round. Some of the properties are sought to be added. In somewhat similar facts, Hon'ble the Bombay High Court in Rajabhadur Jiyaram Yadav Vs Prakash @ Pappu Yadav 2016 (2) Mh.L.J 639 allowed such amendment post trial amendment to remove the legal defect if any and to save the suit being defeated. Costs follows the event. The points for determination are answered accordingly. Hence, the following

Order

1 The application is allowed subject to costs of Rs.1500/- payable forthwith.

2 Plaintiff to carry out the proposed amendment forthwith, and file on record duly amended within 7 days from today. It is made clear that if the plaintiff fails to file the amended plaint the matter to proceed as if there was no amendment.

3 The proceedings can be controlled and has to be expedited. The suit is listed twice in a week.

4 Costs in the cause.

Jath

Date:18/03/2026

(Sanjay P. Bunde)

Jt.C.J.J.D, Jath