

Order below Exh.____ in RCS 36/2009
Radhabai Karade and Ors Vs Vikaram Dafale and Ors
(CNR-MHSN08-000156-2009)

The application is for under Order 6 Rule 17 of the CPC.

2 Perused, the application, say and the record.

3 Heard, both the sides.

4 The suit initially for fixation of boundaries, later on for the amendment, a theory of having perfected title by adverse possession was claimed, along with a decree of perpetual injunction. The defendants have filed their counter/amended pleadings, accordingly. The detailed ws and counter claim is below Exh.22. The counter claim initially for a decree of mandatory injunction, later on for the amendment, sought relief of possession of the suit/counter claim property. The amendment has been allowed, vide order below Exh.162. The defendants have accordingly, carried out the proposed amendment in the counter claim.

5 The application is premised on the ground that the plaintiff 2.1 for legal necessity sold 0 H 12 R out of S.No.490/2 to one Kamal Annaso Maharnur, vide resgistered sale deed Dt.18/11/2020. The ME 24075 has been duly certified on the name of the purchaser Kamal. The sale deed is out of the land of plaintiff 2. Plaintiff 1 Radhabai and also her son, offered consent to sale the eastern side 40.33 R land to the proposed defendants 7 and 8 by registered sale deed Dt.02/11/2023. Their names have been mutated on the revenue record. A copy of the sale deeds have been produced on the record.

6 The application is opposed on the ground, that the application is misconceived. It cannot be under Order 6 Rule 17 of the CPC, but it could be Order 1 Rule 10 of the CPC. It is contended that the property under the sale deed i.e., S.No.490/2 is not the subject matter of the suit.

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 presence of the proposed defendants 6 to 8 is necessary for adjudication and passing an effective decree either as a necessary or formal party?	Yes
2	Whether merely because the application under the wrong provision has to be rejected?	No
3	Whether the proposed amendment is necessary for deciding the real controversy between the parties?	Yes
4	What order?	As per the final order

Reasons

Points 1 to 3

8 For deciding the instant application, the application has to be tested on the touchstone of Order 6 Rule 17 and Order 1 Rule 10 of the Code of Civil Procedure, 1908 (the C.P.C). The test is that whether the proposed amendment is necessary for deciding the real controversy between the parties? and if the presence of the defendants sought to be added, is necessary for passing an effective decree, either as a necessary or formal party? Order 6 Rule 17 of the C.P.C is circumscribed by the proviso, which restricts the post trial amendment, and allows the exception only in case, that despite due diligence, the amendment could not be sought for.

9 It is settled law, that merely because a wrong provision is mentioned, it could not nulify and cannot be a ground to reject the application, for the procedural law is hand maid of justice.

10 It is settled law, that the application has to be tested on the touchstone on the principles of dominus litis vis-a-vis Order 1 Rule 10 of the CPC which provides that the plaintiff is a master of his suit.

11 Now reverting to the facts at the hand, on perusal of the description of the suit property, there is a mention of S.No.490/2. However, the relief has been claimed in respect of the suit property bearing S.No.490/1A. The measurement of the S.No.490 has been carried out by the TILR. As a matter of fact, there is no specific prayer in respect of the S.No.490/2. Further, as a matter of fact and record, the sale deed appears to have been executed in respect of S.No.490/2. The fact remains, it is an admitted position that the old S.No.547 is now new S.No.490 and the sub divisions 490/1A, 490/1B prima-facie, the S.No.490/1A, 490/1B, 490/2 may be said to be the party of same S.No.490.

12 The suit is for bring owner by adverse possession vis-a-vis theory of decree of mandatory injunction by the original defendants. Not mentioning of the S.No. Etc., in the sale deed Dt. 18/11/2020 towards the southern side of S.No. 490/2 assumes importance. In the second sale deed Dt.02/11/2023 towards the northern side of the S.No.490/2, the proposed defendant 6's land has been shown. The mute question is the location of the property. Thus, admittedly, the sale deeds have been executed during the pendency of the suit. Further, it is an admitted fact that the plaintiff intends to delay the suit. The sale deeds are of 2020 and 2023, and the instant application has been filed belatedly. The fact remains merely because delayed amendment or addition of parties have been sought for, could not be a ground to reject the application. The merits need not be gone into, as the sale deeds are pertaining to the S.No.490 and has been mentioned in the description of the suit property, the presence of the proposed defendants appears to be necessary for disposal of the suit, as the formal or the necessary parties, No substantive reliefs has been claimed against the proposed defendants and therefore they have may be termed as formal parties. The plaintiff is the master of his suit. Even though, no reliefs claimed againsts the proposed defendants or in respect of the sale deeds, the fact remains the presence of the parties may be necessary to dispose of the suit. To avoid multiplicity and further complications, the amendment is necessary for deciding real controversy between the parties. The inconvenience caused to the other side has to be remedied. Costs follows the events. Hence, the following

Order

The application is allowed.

2 The plaintiffs are directed to proposed defendants 6 to 8 as the added defendants by making necessary amendment in the plaint forthwith and file on record duly amended copy.

3 The plaintiffs to make an endeavor to serve the added defendants 6 to 8 by special baillif.

4 The plaintiffs to deposit the necessary charges forthwith.

5 The subject to cost of Rs.500/- payable to the other side forthwith as the condition precedent.

Jath

Date:16/04/2025

(Sanjay P.Bunde)

Jt.C.J.J.D, Jath