

**Order below Ex. 26 in RCS 177/2021
Ganapati & ors Vs Akaram & ors.**

The application is under Order 6 Rule 17 and under Order 1 Rule 10 of the CPC.

2 Perused the application, and the record.

3 The application to proceed without say.

4 Heard.

5 The suit is for removal of encroachment in the suit property more particularly mentioned in para 1 of the plaint. The defendants are proceeded ex-parte.

6 The application is premised on the ground that the suit is for removal of encroachment and fixation of boundaries. Due to inadvertence the four boundaries remained to be mentioned. The proposed amendment is more particularly mentioned in para 4, 5, 6, 7, 8 of the instant application.

7 The next amendment is sought that the plaintiffs 3 to 5 have relinquished their shares in favor of plaintiffs 1 and 2 vide registered relinquishment deed in 09/11/2012 and therefore, the name of plaintiffs 3 to 5 be deleted.

8 Plaintiffs 6, 7, 10 to 12 are relinquished their shares in favor of plaintiffs 8 and 9 vide registered relinquishment deed dated 09/11/2022 and therefore, it would be prayed that the name of plaintiffs 7 to 12 be deleted.

9 As a matter of fact and record, the copies of the relinquishment deeds are produced below Exh.23 Sr. Nos.1 and 2. The plaintiff is the master of the suit i.e. dominus litis. The plaintiffs intends to amend the description of the suit property at pre-trial stage. Under Order 6 Rule 17 of the CPC, pre-trial amendment has to be liberally allowed.

10 On perusal of the registered relinquishment deeds, it is clear that some of the plaintiffs have relinquished their shares in favor of plaintiffs 1 and 2 and plaintiffs 8 and 9. However, to avoid any prejudice for the nature of the claim, instant of deleting them as the plaintiffs who may or may not have a share however to save further litigation or prejudice. It would be just and proper to array them as the formal defendants. Further, the same is necessary to avoid any technicality in the execution of the decree if ultimately the suit is decreed. The proposed amendment is necessary for deciding real controversy between the parties.

11 The following points arose for my determination to which I record my findings together with the reasons thereof:-

Sr.No	Points for determination	Findings
1	Whether the proposed amendment is necessary for deciding the real controversy between the parties?	Yes
2	Whether the presence of the third party is necessary for complete adjudication of the suit?	Yes
3	What order?	As per the final order

Reasons

Points 1 and 2

11 It is settled law, that a necessary party is one in whose absence, no effective decree may be passed. A proper party may be one, whose presence may be required, but not necessary for passing an effective decree.

13 The test to decide the instant application is that the presence of the party is necessary either as formal or necessary party for complete adjudication of the suit. The power under Order 1 Rule 10 of the CPC may be exercised at any stage or even by the Court suo-motu and the principles of dominus litis.

14 The test to decide, an amendment application is that the proposed amendment is necessary for deciding the real controversy between the parties under Order 6 Rule 17 of the CPC, which is circumscribed by its proviso. A pre-trial amendment application has to be liberally allowed. The post trial amendment application has to satisfy the test of due diligence.

Costs follow the event. Accordingly, the points for determination are answered. Hence, the following **Order**

The application is partly allowed.

2 The plaintiffs to carry out the proposed amendment/substitution in the plaint, forthwith and file on the record duly amended copy within 14 days from today.

3 The plaintiffs 3 to 5, 7 to 12 be arrayed as co-defendants.

4 Costs in the cause.

Jath

Date:- 07/03/2026

(Sanjay P Bunde)

Jt CJJD Jath