

Order below Exh. 36 in RCS 220/2014
Nehru Vs Head Master & Ors

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

2 Perused the application, say, and the record.

3 Heard.

4 The suit is for a decree of perpetual injunction. It has been averred that the suit property more particularly mentioned in para 1A and 1B of the plaint, are owned by the plaintiff. The suit property more particularly mentioned in para 2 in the plaint is owned by defendant 1 which is a school. The defendants have contested the claim by filing written statement below Exh.28. The Ld.Predecessor has allowed the application below Exh.29 seeking Court commission which came to be allowed on 18/01/2023. This Court has framed issues below Exh.32 on 08/01/2025. The Court commission report and the map is received on record. The plaintiff has filed his affidavit in lieu of examination in chief below Exh.34.

5 The application is premised on the grounds that after the Court Commission's report the plaintiff came to know that the defendant has encroached upon O H 02 R in the suit properties, therefore, an amendment in the cause title, Court fees, prayer and pleadings by way of proposed para 7A etc., have to be incorporated.

6 The application is opposed on the ground that the plaintiff has sought several dates to lead evidence. The trial has begun. There would be change in the nature of the suit. Hence, the application is opposed.

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

Sr.No	Points of determination	Findings
1	Does the plaintiffs prove that the proposed amendment is necessary for deciding the real controversy between the parties?	Yes

2	Whether the application qualifies the test of due diligence?	Yes
3	What order?	As per the final order

Reasons

Points 1 and 2

9 For deciding the instant application, the application has to be tested on the touchstone of Order 6 Rule 17 of the Code of Civil Procedure, 1908 (the C.P.C).

10 The proviso to Order 6 Rule 17 of the C.P.C may not came into picture, for the trial has not began. The test is that whether the proposed amendment is necessary for deciding the real controversy between the parties?.

11 Admittedly, the plaintiff has filed his affidavit in lieu of examination in chief. The Court commission report and map is on the record. The very filing of the affidavit may suggest the bonafides of the plaintiff. The bone contention in the application is that there were compromise talks between the plaintiff and defendant. On perusal of the Roznama, the matter has been listed for compromise. The defendants failed to appear. Therefore, the application may be said to be covered under due diligence.

12 A question may crept in, that whether in a suit for a decree of perpetual injunction, proposed amendment based on the Court Commission's reports could be the basis to seek the amendment. This Court is guided by the law laid down in **Balkrishna Ganpat Elwade Vs Shankar Tukaram Sable 2006 SCC OnLine Bom 879** wherein Hon'ble the Bombay High Court, in somewhat similar facts, allowed the amendment application wherein it was held that the Court Commission's report suggest encroachment by the defendant therein. It was held that the order rejecting amendment application was erroneous and further held that, mere change in the relief would not ipso facto constitute a change in the nature of the suit.

13 Even otherwise, if a new suit is instituted, it would have to be tried. The same may avoid multiplicity of the proceedings. If, the proposed amendment is allowed, no prejudice, would be caused to the

otherside. The other side may contest the proposed amendment. It is settled law that merely because the proposed amendment is allowed does not mean that the suit would be decreed. The proposed amendment is necessary for deciding the real controversy between the parties and may be termed as a subsequent event. Accordingly all the points for determinations are answered. Hence, the following

Order

The application is allowed.

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

3 In the peculiar facts, no order as to costs.

Jath
Date:-25/02/2026

(Sanjay P. Bunde)
Jt. C.J.J.D, Jath