

MHSN110001692012



**ORDER BELOW EXHIBIT 107 IN RCS**  
**NO.62/2012**  
(Kishor Mohan Rakshe Vs Shivaji Bhagwan Patil)

1. This is an application filed by the plaintiff under Order VI Rule 17 of Code of Civil Procedure.
2. It is the contention of plaintiff that, inadvertently, the property situated within City Survey of Atpadi bearing No.948 admeasuring 28 Sq.mtr. and Nagar Bhumapan No.949 admeasuring 67.40 Sq.mtr and Nagar Bhumapan No.950 admeasuring 18.70 Sq.mtr were remained to be inserted at the time of filing suit in the plaint para No.2. It is further contended that, the proposed amendment is formal and it will not change the nature of the suit. In case the amendment is not allowed the rights of the plaintiff will be affected. The suit is for partition and proposed amendment is necessary to be inserted in the plaint. In case the application is not allowed, plaintiff will suffer from irreparable loss. Hence, prayed to allow the application.
3. The legal representatives of defendant No.10 have filed say below Exh.110 and resisted the application. It is the contention of defendants that, the suit is of the year 2012. Number of times the suit is posted for evidence. The plaintiff was having enough opportunity to amend the plaint and inserted the proposed property during this period. The

application has filed at belated stage so as to prolong the matter. The proposed amendment is barred by law of limitations. It will change the nature of the suit. No documentary evidence is filed to support the contentions of the plaintiff in the application. No four boundaries are mentioned in the application of proposed amendment. Hence, considering all these grounds prayed to reject the application.

4. Considering the rival contention on record following points arise for my determination and I have recorded my findings along with reasons thereon.

<b>Sr. No.</b>	<b>Points</b>	<b>Findings</b>
1.	Whether the proposed amendment is necessary for the purpose of determining the real question in controversy between the parties?	Yes
2.	What Order ?	As per final Order...

**REASONS**

**For Point no.1:-**

5. I have gone through the pleadings and documents filed on record. On perusal of copy of C.T.S. No.948, 949 and 950 it can be seen that, the property was previously standing jointly in the name of Jagannath Namdev Rakshe (Grandfather of Plaintiff), brothers of Jagannath i.e. Bhagwan, Shankar and

Pandurang. On perusal of these documentary evidence it can be prima-facie seen that, the property were standing in the name of Jagannath and their brothers jointly. The suit is filed for partition and possession. It is settled principle of law that, when the suit is filed for partition all the properties shall be the subject matter of the suit. The entries further shows that, after demise of Jagannath the property is the entered in the name of Mohan Rakshe i.e. defendant No.4(Father of Plaintiff). Hence, prima-facie considering the nature of offence the right and undivided share of plaintiff in the proposed properties can be seen.

6. It is the plaintiff who has to prove that, the proposed properties are undivided properties and plaintiff is having his undivided share in the property. No prejudice would be caused to the defendants in case the application is allowed and properties are inserted in plaint as para 2C. It is pertinent to note here that, the suit is filed in the year 2012 and plaintiff ought to have knowledge about the proposed properties which are to be included in the suit property at the time of filing suit. The present matter is at the stage of cross-examination of plaintiff and certainly the proviso of Order VI Rule 17 of Code of Civil Procedure will come in picture. On perusal of the application the plaintiff has nowhere explained the due diligence to file the present application at this stage. However, as the suit is filed for partition and opportunity has to be granted to the plaintiff to insert his ancestral properties and get partitioned

all the properties at once.

7. The proposed amendment will certainly help the Court to adjudicate the matter on merits as well as the right of the plaintiff will also be protected in case the application is allowed. The delay for filing the present application has to be compensated by imposing reasonable cost upon the plaintiff. Hence, considering all these facts and circumstances of the case I answer point No.1 in the affirmative and for point No.2 I proceed to pass following order.

**ORDER**

1. The application vide Exh.107 is allowed on cost of Rs.3,000/- to be deposited in Court on next date.
2. The plaintiff is allowed to amend the plaint on next date and file amended plaint on record.
3. Cost in cause.

Date: 09/01/2026.

( R.B.Kulkarni )  
Jt. Civil Judge Jr. Dn., Atpadi.

Certificate

I affirm that the contents of this PD.F file order are same, word to word, as per the original order.

Name of the Stenographer - A. S Yadav  
Court - Jt. CJJD and JMFC, Atpadi.  
Date - 09.01.2026  
Order signed by the  
Presiding Officer on - 09.01.2026  
Order uploaded on - 09.01.2026