

MHSO220003402025



ORDER BELOW EXH. 22 IN Spl.C.S.No.151 of 2025
(Uday Londhe Vs. Umesh Londhe & Ors.)

By way of the present application, the plaintiff seeks leave of this Court to amend the plaint under Order VI Rule 17 of the Code of Civil Procedure, 1908.

Brief facts of the application:

2] The plaintiff submits that on 05.08.2025, defendant No.3 has alienated the suit property by executing a registered sale deed bearing No.4141/2025 in favour of Rutuja Adhitayraj Sharma, who is the daughter of defendant No.1. It is contended that the said purchaser is a necessary and proper party for the effective adjudication of the suit. The plaintiff further submits that the proposed amendment is essential for determining the real controversy between the parties and that if such amendment is not allowed, the suit is likely to fail on technical grounds, thereby causing grave prejudice to the plaintiff. It is, therefore, prayed that the amendment be allowed in the interest of justice. Plaintiff also sought amendment in temporary injunction application and relief against proposed defendant. The plaintiff has also filed a rejoinder to the say filed by defendant No.1 and has denied all the contentions raised therein.

3] The defendant No.1 has filed his say below Exh.26 and contended that the present application is not tenable in law. It is argued that the application has not been filed under Section 151 of the Code of

Civil Procedure, and therefore, this Court cannot invoke its inherent powers to grant the relief of impleadment of Rutuja Adhitayraj Sharma as a party defendant. It is further contended that Order VI Rule 17 C.P.C. deals only with amendment of pleadings and does not permit the addition of a new party to the suit. According to the defendant, the proper provision for such relief is Order I Rule 10(4) CPC, and hence the present application is misconceived, devoid of merits, and liable to be rejected with costs.

4] Defendant No.2 filed say and contended that application is false and bogus. The application filed under wrong provision of Civil Procedure code. It should filed under Section 22 rule 10 of the C.P.C. The application of plaintiff is not tenable under O-VI rule 17 of the C.P.C. Application may kindly be rejected.

5] Perused the application and say filed by defendant No.1 and 2.

6] Learned counsel for plaintiff and defendant No.2 were heard at length. Considered the written argument of plaintiff. Defendant No.1 not argued the matter.

7] Before deciding the present application, it is necessary to reproduce Order I Rule 10(2) of the Code of Civil Procedure, which reads as under:

“The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant,

or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.”

8] In the present suit, it is alleged that the suit property has been alienated in favour of the proposed defendant. The plaintiff has sought reliefs of declaration, partition, and separate possession. If the purchaser of the suit property is not impleaded as a party to the suit, the very purpose of the litigation would be defeated, and it would lead to multiplicity of proceedings. The rights of the plaintiff involved in the suit can be conclusively determined only after a full-fledged trial. However, at this stage, the presence of the purchaser is absolutely necessary. Without impleadment of such purchaser, no effective and executable decree can be passed. Therefore, the proposed defendant is a necessary party to the suit.

9] The present suit is filed for declaration, partition, and separate possession. The plaintiff seeks to bring the proposed defendant on record and to incorporate consequential pleadings by way of amendment, as stated in paragraph 2 of the application. Before deciding the amendment application, it is necessary to refer to Order VI Rule 17 of the Code of Civil Procedure, which reads as under:

“...The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

10] A bare perusal of Order VI Rule 17 CPC makes it clear that the Court is required to adopt a liberal approach while deciding applications for amendment, particularly when such amendment is necessary for determining the real controversy between the parties and for avoiding multiplicity of proceedings.

11] Defendant No.1 and 2 asserted that the plaintiff mentioned incorrect provision of law and filed this application. Merely because the correct provision of law has not been mentioned, the same does not vitiate the application. It is well settled that the Court is required to consider the substance and contents of the application rather than the nomenclature or the provision quoted therein. The issue of bonafide purchaser can be decided after full-fledged trial. The contentions raised by defendant Nos.1 and 2 are not required to be considered at this stage.

12] In the present case, by way of the proposed amendment, the plaintiff seeks to implead a purchaser and to incorporate necessary pleadings arising out of subsequent events. The proposed amendment does not change the nature of the suit nor does it introduce a new or time-barred cause of action.

13] The Hon'ble Supreme court in the case of *Life Insurance Co. Of India Vs. Sanju Builders Pvt. Ltd.* [Civil Appeal No.5909 of 2022] in para No.70 given directions regarding to amendment as per O-VI rule 17 of C.P.C..

(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is malafide, or

(iv) by the amendment, the other side loses a valid defence.

(v) in dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed.

These guidelines are directive in nature for deciding application under O-VI rule 17 of C.P.C. In the instant case proposed amendment is necessary to decide the suit on merit.

14] In the instant case, the proposed amendment is necessary to decide the suit on merits and does not prejudice the defendants in any manner. Further, with respect to the amendment sought in the temporary injunction application, the insertion of paragraph No.14,14(a), and 16 against the proposed defendant is also necessary. In view of Section 153 of the Code of Civil Procedure, the Court is empowered to amend any defect or error in any proceeding at any stage, for the purpose of determining the real issues involved in the suit. Therefore, the proposed amendment in the temporary injunction application is sustainable under Section 153 CPC.

15] In the given circumstances, it is necessary to bring the proposed amendment on record. It is always the bounden duty of the plaintiff to prove the facts asserted by him on his own strength. Allowing the proposed amendment will not prejudice or hamper any legal right of the defendants. The defendants shall have full opportunity to file their additional written statement, to cross-examine witnesses, and to adduce evidence in support of their defence. Hence, considering the stage of the suit and in order to adjudicate the matter finally, effectively, and completely, the amendment application deserves to be allowed. Hence, I pass following order;

ORDER

1. Application is allowed.
2. The plaintiff shall carry out the amendment and file the amended copy within prescribed limit, according to law.

Place : Karmala
Date : 19.01.2026

(S.M.Ghuge)
Civil Judge, Senior Division,
Karmala, Dist.Solapur