

ORDER BELOW EXH.67 IN Spl.C.S.No.869of 2023
(Dadasaheb Nimgire Vs. Bharat Nimgire etc)

This is an application for the amendment in plaint under O-VI, Rule 17 of the Code of Civil Procedure.

2] Plaintiff submitted, he has inadvertently and typing mistake not mentioned the property block No.34/1 at Jeur which has purchased by the defendant No.3 by selling joint family property block No.39/1, in the plaint. This suit is filed for partition therefore all properties and parties should be included for deciding the matter on merit. Proposed amendment is not changing nature of suit. The proposed amendment is essential to find out real controversy between the parties. Lastly, prayed for allow the application.

3] Defendant filed say below Exh.69 and opposed the application. He has contented that the application is false and not maintainable. The plaintiff only claiming to include defendant's self acquired property block No.34/1. Plaintiff has not included property in the name of his son, defendant No.1 and himself. Plaintiff has not filed 7/12 extract of block No.34/1, 166/1 and property No.1062/2. The proposed amendment is not legal one. Hence, considering the legal aspect this application be rejected with costs.

4] Defendant No.1 filed his say to the back page of the application and contended that proper order may be passed.

5] Learned counsel for plaintiff argued that the proposed amendment is technical error and not willfully committed. Proposed amendment is essential to find out real cause of controversy. If

amendment application is rejected plaintiff will lose his right of natural justice.

6] Learned counsel for defendants submitted that plaintiff has not included property in the name of defendant No.1 and his son. This application filed only for prolonging the matter. Application is without due diligence. Lastly prayed for rejection of application.

7] Present suit is filed for partition and separate possession and declaration. Plaintiff wants to be added parties and properties as mentioned in para 3 of the application through proposed amendment. It is essential to replicate Order VI rule 17 of Code of Civil Procedure before passing order on amendment application.

O-VI Rule- 17 of C.P.C. Amendment of pleadings—

“ 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. ”

8] On bare perusal of O-VI rule 17 of C.P.C. it can be gathered that the court has to take liberal approach while deciding amendment application. If opportunity is not given to plaintiff then might be arise multiplicity of proceedings. By the proposed amendment plaintiff wants to add necessary parties and properties in the plaint as

mentioned in para 3 of the application. Defendants contended in their written statement that the plaintiff not added necessary parties and properties.

9] 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]*. Hon'ble Apex Court in para No.70 given various directions before passing order on amendment application.

(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.

10] I have minutely gone through the guidelines directed by Hon'ble Apex Court. It is necessary to amend material particulars in the plaint. In absence of material particulars suit cannot be proceeded. Hon'ble Apex Court held that delay in applying for amendment alone is

not a ground to disallow the prayer. Where the aspect of delay is arguable where the prayer for amendment could be allowed and issue of amendment framed separately for decision. All these direction are applicable to the case on hand.

11] In the instant case, plaintiff sought relief of partition and separate possession of suit property but not mentioned all properties and necessary parties. In such situation, without amendment effective proceeding of matter cannot be proceeded. It is also pertinent to note that without proposed amendment the real dispute between the parties cannot be decided.

12] In such situation, it is essential to bring proposed amendment on record subject to costs. If proposed amendment allowed, it will not hamper any right of defendants. The entire burden for proving proposed fact in amendment lies on the shoulder of plaintiff. Defendants have every right to cross examine as well as to adduce their evidence to put their side. It is pertinent to note that matter will go back to main stage and it caused certain delay on the count of plaintiff. Certain delay can be compensated by awarding some sort of monetary relief to defendants. In such situation, I pass following order.

ORDER

1. Application is allowed subject to costs of Rs.600/-.
(Rs.Six hundred only).
2. Costs shall be given to defendant, till next date.

3. The plaintiff shall carry out the amendment and file the amended copy within prescribed limit according to law.

Place : Karmala
Date : 05.12.2025

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

CERTIFICATE

I affirm that, the contents of the this P.D.F file Order/Judgment are same word to word,
as per the original order/ judgment

Name of Stenographer : B.R.Kondekar
Court Name : Civil Court Senior Division, Karmala
Date : 05.12.2025

Order/Judgment signed
by the Presiding Officer on : 05.12.2025

Order uploaded on : 08.12.2025