

MHST130004792009 	R.C.S. No. 44/2009 Maruti Dhondiba More & others Vs Chandar Ramchandra Pawar & others
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ORDER BELOW THE APPLICATION AT EXH 183

This Application for Amendment of Complaint filed by the Plaintiff/Applicant under Order VI Rule 17 of the Civil Procedure Code, 1908 (CPC), and seeks substantial alterations to the nature and scope of the suit.

02. The Plaintiff's suit, originally instituted in 2009, was primarily for a declaration of rights concerning the suit properties and a consequential permanent injunction. The present application, filed approximately 14 years after the institution of the suit and at the stage when the matter was fixed for the Plaintiff's final arguments, sought wide-ranging amendments.

03. The essential contention of the Plaintiff was that the suit properties were ancestral in nature, held by the parties as tenants in common, and had never been formally partitioned. The Plaintiff claimed that they, being a semi-literate individual, lacked profound knowledge of the legal provisions related to partition at the time of filing the suit. It was averred that upon recent discovery and assessment of the necessity to resolve all disputes in a single proceeding and to avoid future litigation over the ancestral status and possession of the properties, the need for amendment arose.

04. The substantive amendments proposed were:

1. To amend the valuation of the suit, increasing the claim value and court fees to reflect the new relief.
2. To introduce an elaborate family tree and historical facts detailing an alleged informal separation between the original ancestors.
3. To assert that some suit properties were self-acquired by predecessors while others were ancestral.
4. Crucially, to introduce the primary prayer for partition and separate possession of the ancestral agricultural lands through the Collector and the house properties through a Court Commissioner, determining the Plaintiff's specific share.

05. The Defendant strongly opposed the application, submitting that the amendment was completely illegal, highly belated, and filed only after the evidence of both sides had been closed and the Defendant's final arguments were concluded, leaving the matter only for the Plaintiff's reply arguments. The Defendant asserted that the application was an abuse of the court process and directly violative of the Proviso to Order VI Rule 17 CPC. In support of this objection, the Defendant placed reliance on the judgment of the Hon'ble Supreme Court in **J. Samuel and Others v/s Gattu Mahesh and others, (2012) 4 MLJ 40.**

06. Order VI Rule 17 CPC permits the Court to allow either party to alter or amend his pleadings at any stage of the proceedings, provided it is necessary for the purpose of

determining the real questions in controversy between the parties. However, the Proviso is critical: "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."

07. In the instant case, the trial had unequivocally commenced and was substantially complete, reaching the stage of final arguments. Thus, the Plaintiff had the mandatory burden to satisfy the Court that, despite exercising due diligence, the necessity for claiming the relief of partition could not have been discovered or raised prior to this stage.

08. The citation relied upon by the Defendant, **J. Samuel and Others v/s Gattu Mahesh and others**, firmly established the strict and mandatory nature of the Proviso. The Supreme Court emphasised that after the commencement of the trial, an application for amendment cannot be allowed as a matter of routine and the Court must record a specific finding on the issue of 'due diligence'. The Court held that "due diligence" means a diligence which a prudent man would exercise in his own affairs. The core of the proposed amendment is to convert a suit for Declaration and Injunction into a comprehensive Suit for Partition. The distinction between these reliefs is profound; a suit for injunction seeks to protect the existing state of affairs, while a partition suit seeks to fundamentally alter the property rights by breaking the joint tenancy. This belated addition is an attempt to

escape the rigors of Order II Rule 2 CPC, which encourages the inclusion of all reliefs arising from the same cause of action to avoid multiplicity of proceedings. However, the benefits of avoiding a subsequent suit cannot override the mandatory Proviso to Order VI Rule 17 at this terminal stage of the trial. The facts regarding the ancestral nature of the property and the lack of formal partition were inherent to the Plaintiff's knowledge and were necessary facts for the original suit itself. The Plaintiff's claim of lack of legal knowledge or recent realisation, while sympathetic, does not constitute "due diligence" to justify the omission of a fundamental relief like partition over a period of 14 years. The foundation of the right to claim partition existed at the time of filing the original plaint in 2009. Permitting such an extensive amendment, which changes the very character of the suit, would not only involve determining the shares but also require the subsequent stages of passing a preliminary decree and potentially referring the agricultural lands to the Collector for final decree proceedings under Section 54 CPC. This drastic procedural shift would necessitate recalling witnesses, re-framing a new set of issues, fresh valuation, and a further significant delay, causing immense and irreparable prejudice to the Defendant who has already closed his case and concluded arguments, believing the suit to be limited to the original prayers.

09. Considering the mandatory requirements of the Proviso to Order VI Rule 17 CPC as interpreted by the Hon'ble Supreme Court, this Court finds that the Plaintiff has failed to

demonstrate that the proposed amendment could not have been raised before the commencement of the trial despite exercising due diligence.

ORDER

The Application is hereby rejected.

Date:- 09/10/2025

(Rajesh M. Lolge)
Civil Judge, Jr. Division, Patan