

MHTH170000452003

**ORDER BELOW EXHIBIT 118 IN R.C.S. NO.1700028/2003**  
**(Smt. Bharati Baburao Sankhe and Others. Vs. Smt.Subhadra**  
**Pimpale and Others.)**

1] The present application is preferred on behalf of the Plaintiffs, *vide* Order 6 Rule 17 of the Code of Civil Procedure for amending the plaint. It is submitted that, the Plaintiffs have filed the suit against the Defendants Nos. 4 to 7 for removal of encroachment upon the Plaintiffs' property survey No.61/1 (New survey No.30/1) at *Mouje* Boisar and obtaining possession thereof. Except Defendant No.7, the other Defendants have opposed the Plaintiffs' case. That, Mr. Ashish Rameshchandra Shah seeks to develop building in land of survey No.60/2 towards the western side of the suit property. Defendant No.1 sold area of 20 feet x 152 feet to Mr. Ashish Rameshchandra Shah by way of the registered sale deed on 13.03.1997. In consideration, by way of the registered sale deed Defendant No.1 purchase area of 30 *guntha* in survey No.60/2. To avoid any technical issues, the Plaintiffs have prayed for amendment to the plaint in terms of the schedule annexed wherein averment is made regarding the said sale deed and additional prayer for possession for the road/area as demarcated in the map annexed is made.

2] *Per contra*, Defendants have vehemently opposed to the present application *vide* say (Exh. 120) of Defendants No. 1 to 4 and 6. It is submitted that, the present application is filed belatedly to further delay the proceeding and even earlier

amendment applications were filed but the present amendments were not sought. Hence, it is prayed that, the present application may kindly be rejected.

3] Heard Ld. Advocate Shri. R. S. Thakur and Ld Advocate Shri. P.U. Bharadwaj. Perused record.

4] Order 6 Rule 17 of the Code of Civil Procedure (C.P.C.) states :-

*“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.”*

5] Present application is supported with Affidavit at Exhibit 119 and map is also annexed to depict which area is now claimed. Documents are also submitted alongwith list at Exhibit 117. The suit is filed for the relief of declaration, possession and permanent injunction. Issues are framed. The trial has not yet commenced. The nature of the suit does not change in case the amendment is allowed. It is a settled rule of law that, allowing application for amendment of plaint does not mean that the claim is allowed. The Plaintiffs will have to prove claims at the time of trial by leading cogent evidence. The amendment sought appears to be necessary for the purpose of determining the real questions in controversy between the

parties. At this stage considering that the trial has not commenced and being mindful of the fact that the Plaintiffs will have to prove the averments made in view of Sections 101 to 103 of the Indian Evidence Act, application may be allowed. Upon amendment, the Defendants will have opportunity to put up their defence. Order 6 Rule 17 of C.P.C. empowers this Court to permit amendment of pleadings as may be necessary for the purpose of determining the real questions in controversy between the parties. It also appears that, if the amendment is allowed it will avoid multiplicity of proceeding. The question of proof will be dealt with at the time of trial. However, at this stage, amendment may be allowed. Considering delay, costs shall be imposed.

6] In these circumstances, this Court passes the following order:-

**ORDER**

1. Application is allowed *vide* Order 6 Rule 17 of the Code of Civil Procedure subject to payment of costs of Rs. 500/- to be paid collectively to the Defendants.
2. Amendment to the plaint be carried out within fourteen days of payment of the costs.
3. Costs in cause.
4. Application is accordingly disposed off.

Place: Palghar  
Date: 30/07/2026

(Smt. P.S.G. Chalkar)  
2<sup>nd</sup> Jt. Civil Judge Junior Division,  
Palghar

**CERTIFICATE**

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

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|------------------------------------------|-----|---------------------------------------------|
| Name of Stenographer                     | --- | Suraj S. Saddiwal (Grade-III)               |
| Court                                    | --- | 2 <sup>nd</sup> Jt.CJJD & JMFC,<br>Palghar. |
| Date                                     | --- | 30.07.2026                                  |
| Order signed by the Presiding Officer on | --- | 30.07.2026                                  |
| Order uploaded on                        | --- | 30.07.2026                                  |