

MHWS040011962022



ORDER PASSED BELOW EXH.28 IN
REGULAR CIVIL SUIT NO. 43/2022
(Narmadabai @ Godavari Vs Shantabai @
Chandrabhagabai and ors.)

1. The plaintiff has filed the present suit for partition and separate possession in respect of suit land Gat No.373, admeasuring 1 Hectare 23 R, situated at mouje concerned.

2. Defendant Nos.2 and 3 have already filed their written statement at Exh.10. Thereafter, issues came to be framed at Exh.17. The plaintiff entered into witness box and her examination-in-chief as well as cross-examination have been completed at Exh.18. Thereafter, the plaintiff closed her evidence by filing pursis at Exh.23. At present, the matter is posted for evidence of defendants.

3. At this stage, defendant Nos.2 and 3 have filed the present application seeking amendment in their written statement by adding paragraph 11-A. By way of proposed amendment, they want to contend that Gat No.231 of mouje Pimpri (KH), Taluka Mangrulpir, District Washim, admeasuring 0 H 17 R, is still standing in the name of deceased Jayram Baliram Surve and that since the said property is not included in the present suit, the suit is bad for partial partition and is therefore not tenable.

4. The plaintiff has strongly opposed the application. It is contended that the application is highly belated, no explanation for delay is given, the plaintiff's evidence is already over, the matter is fixed for defendants' evidence, the defendants were not diligent, the application is filed only to prolong the proceedings, and the document relied on by defendants does not show that Jayram was exclusive owner of Gat No.231.

5. The plaintiff has also filed pursis at Exh.29 stating that she does not want to claim any share in Gat No.231 and that she abandons her share, if any, in the said property.

6. I have heard learned Advocate Shri S.R. Jakhotiya for defendant Nos.2 and 3 and learned Advocate Shri M.A. Khan for the plaintiff. I have also perused the application, say, pursis and the authorities relied by defendant Nos. 2 and 3 that (i) Kenchgowda (Since Deceased) By Legal Vs. Siddegowda @ Motegowda, (AIR ONLINE 1994 SC 138) and (ii) Govindrao Ajmire Vs. Dadarao Ajmire ((2004) 04 BOM CK 0001).

7. It is true that amendment of written statement is generally viewed more liberally than amendment of plaint. However, once the trial has commenced, the proviso to Order VI Rule 17 of the Code of Civil Procedure becomes applicable. In such a case, amendment cannot be allowed unless the party seeking amendment satisfies the Court that in spite of due diligence, such matter could not have been raised before commencement of trial.

8. In the present case, the trial has already commenced long back. Not only have the issues been framed, but the plaintiff has already entered into the witness box, her evidence is completed, and the plaintiff has closed her side. The matter is now posted for defendants' evidence. Therefore, the stage of the suit is quite advanced.

9. In spite of this, the defendants have not stated in the application as to when they received the alleged document regarding Gat No.231, from whom it was received, and why such plea could not be taken earlier in the written statement itself. There is no specific pleading showing due diligence as required by the proviso to Order VI Rule 17 of CPC. Mere statement that they received one document is not sufficient compliance with the statutory requirement.

10. The defendants were already aware that the suit is one for partition and separate possession. If according to them there were other ancestral joint family properties, they could and ought to have raised such defence at the earliest stage in their written statement. The facts sought to be introduced are not of such a nature as to show that they were beyond the knowledge of defendant Nos.2 and 3 earlier. Hence, the requirement of due diligence is not satisfied.

11. The proposed amendment also appears unnecessary for effective adjudication of the present controversy. The suit is filed in respect of the suit property described in the plaint. The plaintiff has now filed pursis at Exh.29 specifically stating that she does not claim any share in Gat No.231 and abandons her share, if any, therein. Thus, so far as the plaintiff is concerned, she does not seek partition in respect of Gat No.231.

12. Whether Gat No.231 is a joint family property or not is not the subject matter of the present suit. In view of the pursis filed by the plaintiff, the controversy regarding Gat No.231 does not survive for adjudication in this suit. Therefore, permitting the proposed amendment at this stage would not assist in deciding the real issue in controversy, but would rather widen the scope of the trial and cause unnecessary delay.

13. The contention of defendant Nos.2 and 3 that the suit is bad for partial partition cannot be accepted at this stage merely on the basis of the proposed pleading. The judgments relied upon by the defendants lay down the general principle that ordinarily all joint family properties and necessary parties should be brought on record in a partition suit. However, those authorities do not dispense with the statutory requirement under the proviso to Order VI Rule 17 CPC. In the present case, the amendment is sought after commencement of trial and after closure of plaintiff's evidence, without any proper explanation for delay. Therefore, the said

judgments do not assist the defendants on the procedural aspect involved in the present matter.

14. If such amendment is allowed now, the plaintiff will be required to meet a new factual plea after closure of her evidence. This would necessarily reopen the trial, lead to further evidence and prolong the proceedings. The plaintiff has specifically contended that she is old aged. At this advanced stage of the suit, such prejudice cannot be ignored.

15. The Court is therefore of the opinion that the application is belated, lacks pleading of due diligence, is not necessary for determining the real controversy in the present suit, and appears to have been filed at a stage which would delay disposal of the suit. Hence, defendant Nos.2 and 3 are not entitled to the amendment sought. Therefore, I proceed to pass following order.

ORDER

- 1) The application at Exh.28 filed by defendant Nos.2 and 3 under Order VI Rule 17 of the Code of Civil Procedure is rejected.
- 2) Proceed further with the suit for defendants' evidence.

Date : 08/06/2026

(Khwaja.C. Kalal)
Jt. Civil Judge Jr.Division, Mangrulpir,
Tal. Mangrulpir, Dist. Washim.

<u>CERTIFICATE</u>		
I affirm that the contents of this P.D.F. file Judgment/ Order are same word to word as per the original order.		
Name of Court	:-	Jt. Civil Judge (Jr.Dn.) and J.M.F.C., Mangrulpir, Dist. Washim.
Presiding Officer	:-	Khwaja C. Kalal
Order/Judgment uploaded by	:-	Shri. S. S. Rathod (Jr. Clerk)
Date of Order/Judgment	:-	08/06/2026
Judgment/Order signed by the presiding officer on	:-	08/06/2026
Judgment/Order uploaded on	:-	08/06/2026