

**ORDER PASSED BELOW EXH.41.**

(CNR No.MHWS110013112025)

**Jaikisan Khurshilal Thakur (Pardeshi) Vs. Manohar
Dhannulal Chaware & Ors.**

Present application has been filed by defendant No.1 under Order VI Rule XVII of the C.P.C.,1908 thereby seeking permission to make proposed amendment in his written statement.

02] Perused application, say of plaintiff at **Exh.44** and documents filed by both the parties on record. Heard learned advocates appearing for respective parties.

03] Learned advocate for defendant No.1 has submitted that plaintiff has filed the present suit for permanent injunction against the defendants. Defendant No.1 has filed his written statement at **Exh.16** on 07/02/2020. However, at the time of filing said written statement, defendant No.1 was not able to get the document from Revenue Department in respect of surrender proceedings which was effected by the deceased plaintiff in favour of Trust from whom this defendant No.1 has purchased the suit field. It is further submitted that defendant No.1 has tried his level best by applying for the copy of said document from the Revenue Department but the said document was not traced out.

04] Learned advocate for defendant No.1 has further submitted that therefore, in para No.16 of the written statement, it

came to be mentioned by defendant No.1 that the father of deceased plaintiff namely Khurshilal had left possession of the suit field but in fact, it is the deceased plaintiff who had left the possession of suit field in favour of Trust. After filing of written statement by defendant No.1, he had applied for the certified copy of said document at Record Room, Washim and he got the said copy from Record Room on 03/08/2022. Therefore, it is necessary to amend the written statement thereby adding proposed amendment in written statement as described in present application.

05] Moreover, it is further submitted by learned advocate for defendant No.1 that this fact subsequently revealed and it is required to be added in the written statement for fair trial and for proper adjudication of dispute in between the plaintiff and defendants. No prejudice will be caused to the plaintiff if proposed amendment is allowed. Hence, it is prayed by him that present application be granted thereby permitting the defendant No.1 to make the proposed amendment in his written statement as stated above.

06] On the contrary, Learned Advocate for plaintiff has strongly opposed the present application on the ground that the present application came to be filed by defendant No.1 belatedly. It is further submitted that defendant No.1 had detail knowledge about the said document even before the filing of his written statement. The issues came to be framed by the Court on 06/12/2025 at **Exh.39** and the trial has been commenced in the present matter.

07] Learned Advocate for plaintiff has further submitted that apart from the instant suit, other proceeding under Section 43 of the Bombay Tenancy and Agricultural Land (Vidarbha Region) Act, 1958 has been filed by the plaintiffs before Learned Tenancy Tahsildar, Karanja in the year 2019. Said proceeding was decided on 01/04/2022. The appeal against the order of Learned Tahsildar was came to be filed before S.D.O., Karanja and same was also decided on 09/11/2023 maintaining the order of Tahsildar. At present, the revision petition under Section 111 of aforesaid Act is pending before Hon'ble Maharashtra Revenue Tribunal at Nagpur.

08] Learned Advocate for plaintiff has further submitted that in the proceeding before the Learned Tahsildar, the defendant No.1 had led evidence in the year 2018-19 on his behalf and contested the appeal before Learned S.D.O. in the year 2022-23. The defendant No.1 in para No.5 of present application has specifically stated that the relevant document was received by him on 03/08/2022 but no specific reason is mentioned as to how he failed to incorporate proposed amendment in his written statement till today. No diligent person can keep mum from the year 2022 to 2026 to ask for incorporating proposed amendment.

09] Learned Advocate for plaintiff has further submitted that the issues are already framed and the trial has been commenced. It is settled position of law in respect of amendment that the amendment can be permitted only if there is due diligence on the part of party seeking such amendment. The defendant No.1 should have filed

present application before the commencement of trial. The defendant No.1 has nowhere mentioned in present application any reasonable reasons for inordinate delay caused for seeking proposed amendment within time. The proposed amendment will change the nature of suit and will cause prejudice to the plaintiff. Therefore, there is no need of making proposed amendment in the written statement as prayed by defendant No.1. Hence, learned advocate for plaintiff has prayed for rejection of this application with heavy costs.

10] Following points arise for my determination, I have recorded my findings thereon for the reasons discussed below.

<u>S. No.</u>	<u>Points</u>	<u>Findings</u>
1)	Whether the proposed amendment deserves to be allowed ?	In the affirmative.
2)	What order ?	Application is allowed.

REASONS

As to point No.1 :-

11] I have perused record of the matter and also considered the submissions of learned advocates appearing for respective parties. It is pertinent to note here that by way of present application, defendant No.1 only wants to make proposed amendment in his written statement about the documents which he received subsequently after filing of his written statement. In view of

facts and circumstances of present suit, proposed amendment is necessary.

12] Moreover, proposed amendment will not change nature of either suit or of defence of defendant No.1. No prejudice will cause to the plaintiff if proposed amendment is allowed as plaintiff will also get an opportunity of making consequential amendment in his plaint. It is to be noted here that amendment in written statement is required to be allowed liberally as compared to amendment in the plaint. Moreover, the trial has not been commenced in the present suit as the evidence affidavit of plaintiff is yet to be filed and therefore, the question of due diligence on the part of defendant No.1 does not arise at all. However, at the same time, it is also necessary to impose costs on the defendant No.1 for filing present application belatedly. Thus, I think it just and proper to allow the application. Hence, following order is passed.

ORDER

- 1] Application is allowed subject to costs of Rs.500/- to be paid by defendant No.1 to the plaintiff.
- 2] Defendant No.1 shall carry out the proposed amendment within stipulated period and shall file the copy of amended W.S. till next date.
- 3) Parties to take note of this order.

Date – 17/03/2026.

(S. W. Thombre)
Civil Judge, (Sr.Dn.),
Karanja (Lad).

CERTIFICATE

I affirm that the contents of this PDF file judgment/order are same word to word, as per original judgment/order.

- 1) Name of Stenographer :- S. P. Kale (Stenographer G-III)
- 2) Name of Court :- Civil Judge (S.D.), Karanja.
- 3) Date :- 17/03/2026
- 4) Order signed by the :- 17/03/2026
presiding officer on
- 5) Order uploaded on :- 17/03/2026