

MHYA150010562024



ORDER BELOW EXH. 24 IN R. C. S. NO. 41/2024
(Passed on 05.07.2025)

This is an application filed by the plaintiff under Order 6 Rule 17 of the Code of Civil Procedure for amendment.

2. The plaintiff submitted that, due to typographical errors some words are missing. Apart from this to clear position of the suit land. The plaintiff want to amend his suit and insert the word 'mandatory injunction' and four boundary of the suit land. Therefore, the plaintiff pray to allow the application.

3. The defendant filed say and opposed to the application on grounds that, the present application filed after the application of defendant filed under Order 7 Rule 11 of the Civil Procedure Code. If the present application allow it will change the nature of suit. Hence, pray to reject the application.

4. Considering the contentions in the application and submissions of rival parties, following points arise for my determination which are produced along-with my findings thereon, for the reasons stated as under :

Sr.No.	POINTS	FINDINGS
1.	Whether the plaintiff proves that	

- proposed amendment is necessary
for the purpose of determining the
real question is controversy between
the parties ? **Yes**
2. Whether the proposed amendment
will change the nature of suit? **No**
3. What order ? **As per final order.**

REASONS

As to point Nos. 1 & 2 :-

5. As these points are closely interlinked, it shall be more appropriate to discuss them together.
6. At the outset, it is worthwhile to discuss the provisions of Order VI Rule 17 of the code.

Order VI Rule 17 : 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.

7. Above said provisions gives power to the civil court to allow parties to alter, amend or modify the pleadings at any stage of proceedings. But the court will allow amendment only if this amendment is necessary to determine the controversy between the parties. The purpose of this provision is to promote ends of justice and not to defeat the law.

8. Heard both side, perused the record. It is seen that, the suit filed for removal of encroachment and recovery of possession. Matter is an initial stage. Trial has not commenced till today in the present matter.

9. By way of the amendment plaintiff wants to insert prayer of mandatory injunction. The defendant stated that if amendment application allow it will change the nature of suit.

10. It is a necessary to mention here that, the plaintiff wants to add the prayer of mandatory injunction on the same cause of action. If the injunction sought is based on new and distinct cause of action, it can not be allowed insert such prayer by way of amendment. If the present application allow it will not prejudice the other side. Furthermore, the original nature of suit and basic structure of the suit will not change and remains consistent. It appears that, the above said amendment is necessary for complete and final decision on the matter in controversy and to avoid multiplicity of proceeding.

11. In such circumstance, in the light of aforesaid discussion and considering the stage of the suit. I am of the

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opinion that, a relief of mandatory injunction can be added by way of amendment in the present suit which filed for removal of encroachment and recovery of possession. The present suit is filed on 07/10/2024 and this application of amendment filed on 25/04/2025. So far as, delay in filing said application is concerned, by awarding costs, it will suffice the purpose. Accordingly, I answer point No.1 in the positive and point No. 2 in negative.

As to point No. 3 :-

9. Hence, on the backdrop of above discussion and in answer to this point, I pass the following order :

ORDER

1. Application at Exh.24 is allowed subject to cost of Rs. 400/- (Rupee Four Hundred only) be paid to the defendant on or before next date.
2. The plaintiff shall carried out proposed amendment on or before next date.
3. The plaintiff is direct to pay requisite court fees regarding prayer of mandatory injunction as per rule.

(Order pronounced in the open Court.)

Ner,
Date : 29.06.2022

(G. C. Fulzalke)
Civil Judge, Junior Division,
Ner, Dist. Yavatmal.

CERTIFICATE

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

Name of Stenographer :- Ku. B. N. Nare (Grade-III)

Court :- C.J.J.D. & J.M.F.C., Ner.

Date :- 05/07/2025

Order/Judgment signed by :- 05/07/2025
the Presiding Officer on

Order/Judgment uploaded :- 05/07/2025
on