

Order Below Exh. 72 in Regular Civil Suit No. 05/2026
(CNR No. MHYA090000262026)

This is an application whereby the plaintiffs have prayed for leave to amend the plaint. By way of amendment, they wish to incorporate paragraph No.5-A and 6-A in the plaint. Further, they wish to add a prayer clause 'AA' in the plaint. Moreover, some other amendments are sought in paragraph No. 07 of the plaint and the application for temporary injunction.

02. The application is opposed by the defendants. According to them, by way of amendment, the plaintiffs wish to alter the nature of suit. The amendment as prayed cannot be allowed. Thus, they prayed for rejecting the application.

03. Perused the record. Heard learned Adv. Mr. R. V. Bhoyar for the plaintiffs, learned advocate Mr. G. P. Khairkar for defendant No. 07 and learned AGP Mr. Nimkar for defendants No. 01 to 06.

04. Learned advocate for defendant No. 07, Mr. Khairkar would submit that a prayer for mandatory injunction is sought to be incorporated. Thus, if the amendment is allowed, it would change nature of suit. Moreover, plaintiffs cannot raise inconsistent pleas. It is the contention of plaintiffs that they are owners of the suit land by way of adverse possession. However, the proposed amendment would show that defendant No. 07 possesses the suit land. Accordingly, plaintiffs cannot be permitted to raise such inconsistent

pleas. Moreover, any consequent amendment in the clause of the plaint relating to 'valuation, jurisdiction and court fees' is not sought for. Thus, the prayer for mandatory injunction, if allowed to be incorporated, the plaintiffs may make further application to amend said clause. The plaintiffs have obtained order of status quo. By making the applications of present kind, the plaintiffs are just delaying and prolonging the suit with ulterior motive to stretch undue benefit of the order for status quo. In all such circumstances, present application is liable to be rejected. Hence, it be rejected, contends learned advocate for defendant No. 07.

05. Learned AGP Mr. Nimkar, for defendants No. 01 to 06, has submitted as per the reply filed.

06. As per rule 17 of Order VI of the Code of Civil Procedure, 1908, the court can allow either parties to amend their pleadings at any stage of the proceeding. All such amendment shall be allowed which are necessary for deciding all the questions in controversy between the parties. The proviso appended to the provision imposes a limitation that when the trial of suit has commenced, the amendment shall not be allowed unless the party seeking the same satisfies that despite of due diligence it could not raise the matter before commencement of trial.

07. Thus, the parties to the suit can be allowed to amend their pleadings at any stage of the suit. All such amendments can be

allowed which are necessary for deciding real questions in controversy between the parties. It is nevertheless subject to the proviso. However, in the instant suit, the trial has not yet commenced. Thus, the proviso is not applicable.

08. Noticeably, the plaintiffs claim that they possesses the suit property since 1981 through their forefathers and now they have acquired title by adverse possession. They contend that the defendants are encroaching over their said land in respect of which they have applied to the concerned authorities for grants.

09. It is noticeable that defendant No. 07 was not party to the suit. Defendant No. 07 company made an application at Exh.25 for impleading it as party defendant. Said application is allowed by this court vide order dated 20/06/2026. Thereafter, said defendant is added.

10. By the proposed amendment, the plaintiffs wish to incorporate the contentions that after making an application at Exh.25 by defendant No. 07 company to this court, certain work is carried over the suit land. It is sought to be contended that the solar panels are now installed by defendant No. 07. Accordingly, the plaintiffs purport to add these contentions with a prayer clause for removal of the solar panels so installed.

11. The word 'inconsistent' denotes two or more things which cannot co-exist. The plea of the plaintiffs as to their adverse

possession and their another plea about encroachment by the defendants cannot be said to be inconsistent. It is so because according to the plaintiffs, they have gained title by adverse possession over the said land which the defendants have now encroached.

12. Moreover, merely because a prayer is added, nature of the suit cannot be said to have changed. Accordingly, contentions in this regard as raised by the defendants are liable to be rejected.

13. Furthermore, it is true that the plaintiffs have not prayed for amendment in a clause of the plaint pertaining to 'jurisdiction, valuation and court fees'. However, it is a technical aspect. Such aspect cannot be taken into account while deciding an application for amendment when such application otherwise deserves to be allowed.

14. On reading of the application, it appears that the amendment is necessitated due to development took place during the pendency of the suit. Truthfulness and correctness of these assertions cannot be gone into at this stage. Said aspect need to be considered upon evidence.

15. Considering all these facts and circumstances, it prima-facie seems that the proposed amendment in the plaint is necessary for deciding all the questions in controversy between the parties.

16. Likewise, in view of the aforesaid amendment in the plaint, the

plaintiffs can be permitted to consequently amend the application for temporary injunction as is permitted by Section 153 of the Code of Civil Procedure, 1908.

17. Accordingly, application deserves to be allowed. Hence, following order

ORDER

1. Application is allowed.
2. The plaintiffs shall carry the amendment as permitted till next date and file copies of amended plaint and copies of amended application for temporary injunction on or before next date.

Place : Kelapur.
Date : 01/07/2026.

(B. D. Tare)
Civil Judge Senior Division,
Kelapur

- : C E R T I F I C A T E : -

I affirm that the contents of this Pdf file order are same words as per original order.

Name of Steno :- J. G. Thakre

Court Name :- The Court of Civil Judge
(S.D.), Kelapur.

Date of Order :- 01/07/2026

Order signed by PO. on :- 01/07/2026

Order uploaded on :- 01/07/2026