

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 9576/2025

Smt. Anjana Kanwar W/o Shri Bhawani Singh, Aged About 63 Years, Resident Of - Chopra House, Ummed Chowk, Jodhpur, Rajasthan.

-----Petitioner

Versus

1. Jodhpur Development Authority, Through Its Commissioner, Jodhpur Development Authority, Jodhpur, Rajasthan.
2. The Deputy Commissioner, Jodhpur Development Authority, Jodhpur, Rajasthan.

-----Respondents

For Petitioner(s) : Ms. Nandipana Gehlot.
For Respondent(s) :

HON'BLE MR. JUSTICE ARUN MONGA

Order (Oral)

27/05/2025

1. The petitioners (defendants), by way of this writ petition, seeks quashing of the impugned order dated 03.04.2025 (Annex.4), whereby the learned Trial Court has rejected the application under Order 6 Rule 17 of CPC filed by the plaintiff/petitioner for amendment in the memo of plaint.
2. For ease of reference, translation of relevant portion of the impugned order dated 03.04.2025 (as provided) is as under:

“Arguments of both the parties were heard on the application filed by the advocate on behalf of the plaintiff under Order 6 Rule 17 read with Section 151 CPC. The file was perused.

The advocate plaintiff has submitted an application and requested for amendment in the plaint presented on his behalf that the neighbourhood of the disputed property has been wrongly marked as Sahawan and now the neighbourhood is in the north - plaintiff's property plot number 8A, 8B, 8C, 40 feet road in the south, 60 feet road in the east, 40 feet road in the west. In this regard, it is

noteworthy that on behalf of plaintiff Anjana Kanwar, a permanent injunction has been presented regarding the claim against the defendants Jodhpur Development Authority and others on 19.09.2010, in which the issues have been framed and the statements of witness PW-01 Bhawani Singh have been recorded in the plaintiff's evidence in the file, which statements have not been completed yet. If the plaintiff has sought relief from the court regarding amendment of the neighbourhood of the disputed property, its permission is granted by the court, then the nature of the entire claim will change. According to law, in an application under Order 6 Rule 17 of the Code of Civil Procedure, the court cannot allow any amendment in the claim which will change the nature of the entire claim. The nature of the amendment sought by the plaintiff is such that if it is accepted, the nature / circumstances of the entire claim will change. In such a situation, the application presented by the plaintiff under Order 6 Rule 17 read with Section 151 CPC does not seem to be justified and is rejected and dismissed."

3. Having heard learned counsel for the petitioner, I do not deem it necessary to issue notice to the respondents, as no prejudice would be caused to him by the nature of order which I proposed to pass.

4. It transpires that the trial is at a very nascent stage and what weighed on the mind of the learned Judge while dismissing the application under Order 6 Rule 17 of CPC by the plaintiff were, i.e., (i) delay in trial proceedings that would be caused by allowing the amendment, and (ii) the perceived lack of due diligence on the part of the plaintiff in not including the correct description of the suit property in the original plaint.

5. Having seen the impugned order vis-a-vis the contents of the application under Order 6 Rule 17 of CPC, I am of the view that the learned trial Court adopted rather an over-pedantic approach in a mechanical manner in dismissing the application, observation that allowing of the same would delay the trial proceedings.

6. No doubt, by allowing the application, the same would have necessitated inviting amended written statement while giving proper opportunity to the respondents, and thus, there was likely

to be some delay caused in the same. However, what seems to have been lost sight of by the learned trial Court is that the delay, if at all, was detrimental to the plaintiff himself, who had filed the suit for permanent injunction, and as far as the defendants are concerned, they could have been compensated qua the delay by imposing the appropriate costs while allowing the application.

7. Moreover, the nature of amendment sought by the petitioner (plaintiff) is not such that it would prejudice the defendants in any manner, as neither any new facts are being pleaded nor the contents which have been sought to be changed in the plaint are of such nature which were to the knowledge of the plaintiff and yet, no steps were taken to plead the same at first instance. All that has been prayed is description of the suit property, which does not appear to be a deliberate error, rather an unintentional inadvertence.

8. In the premise, the writ petition is allowed and the impugned order dated 03.04.2025 is set aside. The application under Order 6 Rule 17 of the CPC is allowed. The petitioner shall file the amended plaint, if not already filed, within a period of 30 days, along with a web-print of this order, subject to payment of cost of Rs. 5,000/- to the defendants.

9. Pending application(s), if any, stand disposed of.

(ARUN MONGA),J