

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 5989/2025

Ramavtar S/o Shri Parsadi, Aged About 70 Years, R/o Near
Bandariya Balaji, Trilok Nagar, Gangapurcity (Raj.)

-----Petitioner

Versus

- 1 Hansraj S/o Late Shri Shivjilal, Since Deceased) Through
His Legal Heirs
- 1/1 Priyanshu S/o Late Hansraj, Aged About 10 Years,
- 1/2 Muskan D/o Late Hansraj, Aged About 12 Years,
- 1/3 Bachchi D/o Late Hansraj, Aged About 2 Years,
Minor Through Their Natural Guardian Mother Smt. Lali
W/o Late Hansraj, R/o Near Bandariya Balaji, Trilok
Nagar, Gangapurcity
- 2 Santra W/o Late Shri Shivjilal, Aged About 58 Years, R/o
Near Bandariya Balaji, Trilok Nagar, Gangapurcity Tehsil
Gangapurcity
- 3 Virendra S/o Veeru S/o Late Shivjilal, Aged About 28
Years, R/o Near Bandariya Balaji, Trilok Nagar,
Gangapurcity Tehsil Gangapurcity
- 4 Lali W/o Hansraj, Aged About 28 Years, R/o Near
Bandariya Balaji, Trilok Nagar, Gangapurcity Tehsil
Gangapurcity

-----Respondents

For Petitioner(s)	:	Mr. Devendra Kumar Bhardwaj Ms. Jaya Saini
For Respondent(s)	:	Mr. Sonu Kumar for Mr. Keshav Kumar Agrawal

HON'BLE MR. JUSTICE BIPIN GUPTA
Judgment / Order

18/03/2026

1. The present writ petition has been filed assailing the order dated 10.03.2025 passed by the learned Additional Civil Judge No.2, Gangapurcity, in Civil Suit No. 262/2022, whereby the

application filed by the plaintiff-petitioner under Order VI Rule 17 CPC has been dismissed.

2. The brief facts of the present case are that the plaintiff-petitioner instituted a suit for permanent and mandatory injunction. The learned Trial Court issued notices to the defendants-respondents, and upon receipt of the same, they filed their reply to the suit. Thereafter, the learned Trial Court appointed a Mauka Commissioner for inspection of the spot, who, after conducting the inspection, submitted his report on 29.11.2022.

2.1. Subsequently, the respondent filed an application to the said report and prayed for appointment of fresh commissioner.

2.2 Thereafter, vide order dated 06.02.2023 the learned trial Court observed that the report which has been prepared on 29.11.2022 is without issuing notice, thus, have very less evidentiary value. Therefore, the learned Trial court appointed the other Mauka Commissioner who has given the report dated 10.02.2023.

2.3 The petitioner herein filed an application under Order IV Rule 17 CPC seeking amendment for the relief of demolition of construction which has been made during the pendency of the suit.

2.4 After hearing both parties, the learned Trial Court rejected the said application vide order dated 10.03.2025.

3. Being aggrieved by the order dated 10.03.2025, the plaintiff-petitioner has preferred the present writ petition.

4. Learned counsel for the petitioner submits that the impugned order dated 10.03.2025 passed by the learned Trial Court is contrary to law and the settled principles governing amendment of pleadings under Order VI Rule 17 CPC. He contends that during the pendency of the suit, the learned Trial Court initially appointed a Mauka Commissioner, who submitted his report dated 29.11.2022. Thereafter, a fresh Mauka Commissioner was appointed, who submitted a subsequent report dated 10.02.2023.

4.1 Learned counsel submits that the subsequent report dated 10.02.2023 clearly reveals that certain constructions were raised after the earlier report dated 29.11.2022. Thus, it constitutes a subsequent development during the pendency of the suit, which materially affects the rights of the parties.

4.2 Learned counsel for the petitioner further submits that in order to bring these subsequent facts on record and to incorporate an appropriate relief for demolition of the said unauthorized construction, the petitioner filed an application under Order VI Rule 17 CPC seeking amendment of the plaint.

4.3 Learned counsel for the petitioner argues that the learned Trial Court failed to appreciate that the proposed amendment neither changes the nature of the suit nor introduces a new cause of action, but is only intended to bring on record the subsequent developments arising during the pendency of the proceedings. He submits that no prejudice would have been caused to the respondents if the amendment had been allowed, as they would have had full opportunity to contest the same by filing an additional written statement and leading evidence.

4.4 Therefore, the rejection of the amendment application by the learned Trial Court is arbitrary, legally unsustainable, and amounts to a failure to exercise jurisdiction vested in it.

4.5 Consequently, he prays that the impugned order dated 10.03.2025 be set aside, and the application filed by the petitioner under Order VI Rule 17 CPC be allowed in the interest of justice.

5. Per contra, learned counsel for the respondent submits that the construction reflected in the report dated 10.02.2023 was already in existence prior to the filing of the suit. He further submits that the report dated 29.11.2022 was prepared without issuing notice to the parties.

5.1 Learned counsel for the respondent further submits that objections were raised to the said report, and a prayer was made for appointment of a fresh Commissioner.

5.2 Learned counsel for respondents submits that, vide order dated 06.02.2023, the contention of the respondent was accepted, and the Court held that the report prepared without issuing notice had very little evidentiary value. Consequently, a new Commissioner was appointed, who submitted the report dated 10.02.2023.

5.3 Learned counsel for the respondents further submits that, in the original suit itself, the plaintiff had already prayed that if any construction or obstruction is raised during the pendency of the suit by the defendant, the same be directed to be removed by way of mandatory injunction. Thus, he submits that such relief already exists in the plaint, and therefore, the learned Trial Court has not

committed any illegality in dismissing the application under Order VI Rule 17 CPC.

6. Heard both the counsel for both the parties and perused the material available on record.

7. This Court finds that the plaintiff-petitioner contends that the construction was raised during the pendency of the suit, whereas the defendants-respondents assert that the construction existed prior to the institution of the suit.

8. This issue is to be adjudicated by the learned Trial Court during the course of trial, upon appreciation of evidence led by the parties, and cannot be conclusively determined at this stage.

9. This Court further finds that the plaintiff-petitioner has already sought relief in respect of any construction raised by the defendant during the pendency of the suit, including its demolition. Since such relief is already part of the original pleadings, the same can be duly adjudicated by the learned Trial Court during trial.

10. In view of the above, this Court finds no error in the impugned order so as to warrant interference under Article 227 of the Constitution of India. Accordingly, the writ petition stands dismissed.

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

(BIPIN GUPTA),J