

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1060 OF 2026

Rajiv Lalit Sangtani and ors. ...Petitioners

Versus

Nikhil Kailash Masaal and ors. ...Respondents

Mr. Reehan Ajmerwalla, i/b Darshanchandra Zaveri, for the
Petitioners.

Mr. Anurag Mishra, i/b Nitesh Sancheti, for Respondent Nos.1
and 2.

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CORAM: N. J. JAMADAR, J.

DATED: 3rd FEBRUARY, 2026

Order:-

1. Heard the learned Counsel for the parties.
2. The challenge in this petition is to an order dated 2nd December, 2025 passed by the learned Civil Judge, whereby an application preferred by the plaintiffs – respondent Nos.1 and 2 – original plaintiffs for amendment in the plaint, came to be allowed so as to correctly describe the suit property and implead a necessary party and seek relief in respect of the suit property so inserted.
3. The respondents-plaintiffs have instituted a suit for an injunction to restrain petitioner Nos.1 to 3 – original defendant Nos.1 to 3 allegedly from using the suit way, which the plaintiffs claim to be their private way, running through Survey No.44,

Hissa Nos.2/1/2, 2/1/2, 2/2/1, 2/2/3 situated at Pisoli, Taluka Haveli, District Pune.

4. In the written statement filed on behalf of the defendants, the defendants contended, *inter alia*, that the suit was bad for mis-description of the suit property and non-joinder of necessary parties. The issues were settled, however, as the plaintiffs did not lead evidence, the learned Civil Judge by an order dated 4th August, 2023 closed the evidence of the plaintiffs and directed the defendants to lead the evidence and, thereafter, the plaintiffs filed the application for amendment in the plaint so as to add the way described in proposed paragraph 1A as the suit property and implead petitioner No.4 as a party defendant to the suit.

5. By the impugned order, the learned Civil Judge was persuaded to allow the application observing, *inter alia*, that the proposed amendment was necessary for adjudication of the real question in controversy between the parties and it would neither change the nature of the suit nor cause prejudice to the defendants.

6. Mr. Ajmerwalla, the learned Counsel for the petitioners, would urge that, the learned Civil Judge committed a manifest error in proceeding on the premise that the proviso to Order VI

Rule 17 did not come into play though the evidence of the plaintiffs was already closed. It was urged with a degree of vehemence that, the trial had indeed commenced. It was, therefore, necessary for the plaintiffs to satisfy the test of due diligence. In the absence thereof, the trial Court could not have permitted the amendment when the suit was listed for recording defence evidence.

7. Secondly, it was urged that the defendant had raised specific grounds of mis-description of the suit property and non-joinder of the necessary parties. Yet, no steps were taken by the plaintiff to amend the plaint at an earlier point in time. Thus, the amendment could not have been permitted at a belated stage. The endeavour of the plaintiffs to demonstrate that the description of the suit property was required to be corrected as the discrepancy came to light recently, was a clear subterfuge, urged Mr. Ajmerwalla.

8. In opposition to this, Mr. Mishra, the learned Counsel for respondent Nos.1 and 2 – plaintiffs, would urge that the trial Court has correctly exercised the discretion. Correction in the description of the suit property was necessary for a just decision of the case and to avoid further complications at the stage of the execution of the decree, in the event, the suit is decreed. The

learned Counsel placed reliance on the judgments of the Supreme Court in the cases of *Sajjan Kumar vs. Ram Kishan*¹ and *Pratibha Singh and ors. vs. Shanti Devi Prasad and ors.*².

9. By the proposed amendment, the plaintiffs professed to furnish correct description of the suit property. As noted above, it was the stand of the defendants that the description of the suit property was incorrect and the suit was bad for non-joinder of the necessary parties. It is trite, all amendments, which are necessary for the determination of the real question in controversy shall be permitted, provided the amendment does not cause irretrievable prejudice to the adversary. In the case at hand, it can hardly be contested that a correct description of the property over which the parties are at loggerhead is necessary for determination of the real questions in controversy between the parties. As enunciated in the case of *Sajjan Kumar* (supra), correction of the description of the suit properties is necessary for the purpose of bringing to the fore the real question in controversy between the parties and the refusal to permit the amendments creates needless complication at the stage of execution, in the event, the plaintiffs succeeds in the suit.

1 (2005) 13 SCC 89.

2 (2003) 2 SCC 330.

10. Since it was the specific stand of the defendants that the suit property was not correctly described and necessary parties were not impleaded, the learned Civil Judge was well within his rights in permitting the plaintiffs to carry out the amendment as procedure which is a handmaid of justice cannot be allowed to score a march over the substantive justice.

11. In the case at hand, the interdict contained in the proviso to Order VI Rule 17 is not attracted with full force and rigor as the proposed amendment merely gives a correct description of the suit property, and implead a party, which according to the defendants themselves is a necessary party to the suit. The power to implead a necessary party can be exercised at any stage of the suit.

12. In the totality of circumstances, there is no potentiality of prejudice to the defendants. The learned Civil Judge has thus correctly exercised the jurisdiction to allow the amendment. Resultantly, no interference is warranted in exercise of the supervisory jurisdiction.

13. The petition, thus, stands dismissed.

[N. J. JAMADAR, J.]