ARHJ:
16.12.2025

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ORDER

IN

WRIT PETITION NO.108512 OF 2025 (GM-CPC)

gab
CT-MCK
LIST NO.: 1 SL NO.: 33

HC-KAR

HC-KAR

IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 16TH DAY OF DECEMBER 2025

BEFORE

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

R

WRIT PETITION NO. 108512 OF 2025 (GM-CPC)

BETWEEN:

1. SHRI MOHAMMADRAFI
   S/O. MEHABUBSAB,
   AGE. 51 YEARS, OCC. PVT. EMPLOYEE,
   R/O. MEGALAPETTE, HUNGUND,
   DIST. BAGALKOT.

2. SMT. AMEENBI
   W/O. MEHABUBSAB TALIKOTI,
   AGE. 48 YEARS, OCC. HOUSEHOLD,
   R/O. NEAR BUS STAND, HUNGUND,
   DIST. BAGALKOT.

...PETITIONERS

(BY SRI. PRANAV BADAGI, ADVOCATE FOR
SRI. S.B. HEBBALLI, ADVOCATE)

AND:

1. BANDENAWAZ
   S/O. HUSANSAB TALIKOTI,
   AGE. 46 YEARS, OCC. HOUSEHOLD,
   R/O. NEAR BUS STAND,
   JAMIYA MASJID ROAD, KOLHAR,
   BASAVANBAGEVADI, DIST: VIJAYAPUR.

2. SHRI AZUIM
   S/O. ABDULGANI LINE,
   AGE. 31 YEARS, OCC. PVT. EMPLOYEE,

3. KUM ANJAMMA
D/O. ABDULGANI LINE,
AGE. 28 YEARS, OCC. HOUSEHOLD,

4. KUM TLASIMA
D/O. ABDULGANI LINE,
AGE. 25 YEARS, OCC. STUDENT,
R2 TO R4 ARE R/O. AZAD NAGAR,
NEAR LAKEVIEW HOSPITAL,
BELAGAVI, DIST. BELAGAVI.

5. ASIF
S/O. SHOUKATALI LINE,
AGE. 56 YEARS, OCC. PVT. EMPLOYEE,
R/O. HANUMASAGAR, TQ. KUSHTAGI,
DIST. KOPPAL.

6. SHIDABEGUM
W/O. YAKUB ATTAR,
AGE. 41 YEARS, OCC. HOUSEHOLD,
R/O. BASARKOD, TQ. MUDDEBIHAL,
DIST. VIJAYAPUR.

7. SMT. KUTUJA
W/O. ANJU CONTRACTOR,
AGE. 36 YEARS, OCC. HOUSEHOLD,
R/O. RAGATPET, ILKAL, TQ. ILKAL,
DIST. BAGALKOT.

8. SHANAZ
W/O. DADASAB LINE,
AGE. 41 YEARS, OCC. HOUSEHOLD,

9. YASHIN
S/O. DADASAB LINE,
AGE. 31 YEARS, OCC. HOUSEHOLD,

10. ASIF
S/O. DADASAB LINE,
AGE. 28 YEARS, OCC. PVT. EMPLOYEE,

11. AIYUSHA
D/O. DADASAB LINE,
AGE. 25 YEARS, OCC. HOUSEHOLD,

R8 TO R11 ARE
R/O. JANATA PLOT, MUDHOL ROAD,
LOKHAPUR, TQ. MUDHOL,
DIST. BAGALKOT.

…RESPONDENTS

(BY SRI. MAQBOOLHAMED M. PATIL, ADVOCATE FOR R1;
NOTICE TO R6 TO R11 IS SERVED)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 READ WITH ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT IN THE NATURE OF CERTIORARI, QUASHING THE IMPUGNED ORDER DATED 06.09.2025, PASSED ON IA NO.7 FILED UNDER ORDER 6 R 17 CPC IN OS NO.188/2015 ON THE FILE OF ADDITIONAL CIVIL JUDGE AND JMFC, HUNGUND, VIDE ANNEXURE-E; AND ALLOW THE SAID APPLICATION, VIDE ANNEXURE-C; ANY OTHER WRIT, ORDER OR DIRECTION AS DEEMED FIT TO BE GRANTED IN THE INTEREST OF JUSTICE.

THIS PETITION COMING ON FOR FURTHER HEARING THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

ORAL ORDER

Whether the "due diligence test" envisaged in the proviso to Order VI Rule 17 of the Code of Civil Procedure 1908, applies to every application seeking amendment of pleadings filed "after commencement of trial" or the proviso has inherent limitations in its application on certain types of applications seeking amendment of pleadings filed after commencement of trial, is the question that needs consideration in this petition.

1. The petition is filed assailing the order rejecting the application seeking amendment of the plaint which is filed 10 years after the presentation of the plaint and also after commencement of trial. The plaintiffs are the petitioners.

2. The petitioners' suit is one for declaration and injunction to declare that the sale deed dated 24.04.2009 executed by 1st plaintiffs' father in favour of the defendants as cancelled. Consequential relief of injunction is to restrain the defendants from interfering with the plaintiffs' possession over the suit property.

3. The defendants disputed the claim. The defendants asserted their title and possession based on the sale deed dated 24.04.2009.

4. After the evidence of PW2, I.A. No.VII was filed to incorporate a plea that the plaintiffs were dispossessed from the property on 29.03.2022 i.e., during the pendency of the suit. In addition, the plaintiffs sought to include a prayer for possession.

5. The defendants opposed the prayer. The Trial Court dismissed the application on four grounds referred to in paragraph No.10 below.

6. The Trial Court also noticed the judgment of the Hon'ble Apex Court in ***Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and Another***[1] and the judgment of the Co-ordinate Bench of

[1] ***(2022) 16 SCC 1***

this Court in ***Kumari Meenakshi and others vs. Smt. H. Nagaratnamma and others***[2].

7. Learned counsel appearing for the plaintiffs-petitioners would contend that:

7.1. The plaintiffs, in their application seeking amendment, stated that despite an admission by PW1, in cross-examination regarding dispossession in 2014, PW2(a witness examined on behalf of the plaintiffs) stated that the plaintiffs were dispossessed in 2022 during the pendency of the suit.

7.2. Under Article 64 of the Limitation Act, 1963 (Act,1963), the limitation to seek possession is 12 years from the date of dispossession; as such, the application is within time.

8. Learned counsel for the defendants/respondents would urge that:

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[2] ***2023 (3) KCCR 2485***

8.1 The plaintiffs admitted in cross-examination to being dispossessed in 2014, and the subsequent evidence of PW2 that plaintiffs are disposed in 2022 is an afterthought to circumvent that admission.

8.2 Having been dispossessed in 2014, the plaintiffs ought to have filed suit for possession; the proposed amendment is time-barred and changes the nature of the suit.

8.3 Order VI Rule 17 of the Code of Civil Procedure (Code), as amended in 2002, mandates that a party seeking an amendment *"after the commencement of trial"* must satisfy that despite **due diligence**, the plea for amendment could not be made before the commencement of trial. The plaintiffs failed to establish due diligence and not entitled to the relief.

9. The Court has considered the contentions raised at the Bar and perused the records.

10. The Trial Court has dismissed the applications on four grounds:

a. The plaintiffs did not satisfy that, despite **due diligence**, they could not raise the plea before the commencement of the trial;

b. The application was filed 10 years after the institution of the suit and the plea is belated;

c. The amendment will take away the admission given by the plaintiffs;

d. The amendment is not necessary for adjudication of the case.

11. Order VI Rule 17 of the Code amended in the year 2002, reads as under:

> ***"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*****."**

(Emphasis supplied)

12. In 2002, the *proviso* was inserted to Order VI Rule 17 of the Code. Prior to the amendment in 2002, the Order VI Rule 17 had no restrictive proviso.

13. Order VI Rule 17, after the 2002 amendment to the Code, appears to contain two parts: Though on a plain reading, it appears that the aforementioned provision contains two separate parts, one dealing with applications seeking amendment before commencement of trial and another post commencement of trial, on careful analysis, it appears that *in certain circumstances,* the applications filed under Order VI Rule 17 of the Code seeking amendment post commencement of trial need not pass the test of due diligence contemplated under proviso to Order VI Rule 17 of the Code.

14. The question is, to what extent, the *proviso* curtails the power of the Court to amend pleadings after the commencement of trial.

15. On a plain reading of the *proviso* to Order VI Rule 17 of the Code, one can argue that an application seeking amendment is not permissible unless the person seeking amendment satisfies the Court that, despite due diligence, the party could not seek amendment before commencement of the trial.

16. The obvious question would be, if the party does not demonstrate "due diligence" to the satisfaction of the Court, should the application seeking amendment "post-commencement of trial" compulsorily suffer an order of dismissal? The answer is no. The reasons are as follows.

17. *Whether the application seeking amendment, post-commencement of trial, is to be allowed or not has to be decided on the "nature of amendment sought" and not necessarily on the "due diligence test" at least in respect of applications seeking certain types of amendment, if not all*. It does not mean that the "due diligence" test has no application under proviso to Order VI Rule 17 of the Code.

The relevance of "due diligence test" is dependent on the nature of the amendment sought and other attending circumstances, and not just dependent on the sole factor as to whether trial has commenced or not at the time of filing application seeking amendment.

18. To justify the above said view, it is necessary to consider the object behind introducing the proviso to Order VI Rule 17 of the Code in 2002.

19. Prior to the 2002 amendment, Order VI Rule 17 of the Code, conferred wide powers on the Court to permit amendment of the pleadings. Lawmakers felt that the provision of Order VI Rule 17 as it existed before the 2002, was misused to delay the hearing on merits of the suit or proceedings. To prevent such misuse, the proviso was introduced.

20. The Court takes the above view in view of the observations in ***Ajendraprasadji N. Pandey and Another***

v. Swami Keshavprakeshdasji N and others.[3] extracted below which also refers to the judgment in ***Salem Advocate Bar Association, TN v. Union of India***[4] indicate the above said view:

> *"34. It is seen that before the amendment of Order 6 Rule 17 by Act 46 of 1999, the court has taken a very wide view of the power to amend the pleadings including even the plaint...*
>
> *35. By Act 46 of 1999, there was a sweeping amendment by which Rules 17 and 18 were wholly omitted so that an amendment itself was not permissible...*
>
> *36. Ultimately, to strike a balance the legislature applied its mind and reintroduced Rule 17 by Act 22 of 2002 w.e.f. 1-7-2002... But it also had a total bar introduced by a proviso which prevented any application for amendment to be allowed after the trial had commenced unless the court came to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of the trial...*
>
> *37. Reliance was placed on the judgment of this Court in Salem Bar Assn. case [(2005) 6 SCC 344]... The object is to prevent frivolous applications which are filed to delay the trial. There is no illegality in the provision."*
>
> (Emphasis supplied)

[3] ***(2006) 12 SCC 1***
[4] ***(2005) 6 SCC 344***

21. It is also required to be noticed that the judgment in ***Salem Bar Association*** (*supra)* is rendered by three Judges Bench. It can be said that the main object of the proviso to Order VI Rule 17 of the Code is to put an end to the objectionable practice of filing applications to amend the pleadings with a malafide intention to delay the hearing. In addition, it can also be said that the proviso aimed at inculcating a more diligent and professional approach while settling the pleadings.

22. Since the original text of Order VI Rule 17 of the Code is retained in the 2002 amendment to the Code, it is apparent that Parliament did not do away with the primary purpose of the rule providing amendment, i.e., to:

(a) decide the real questions in controversy;

(b) avoid multiplicity of litigation.

23. The principles of liberal construction still apply in those situations where the application seeking amendment of pleading is filed to avoid multiplicity of

litigations and to resolve all controversy between the parties, notwithstanding the proviso. However, the proviso cannot be made nugatory; it has a purpose to serve in appropriate cases.

24. It may not be possible to exhaustively list where amendment applications *"post-commencement of trial"* have to be allowed in spite of the party applying for amendment not passing the *"due diligence test".*

25. The Court is of the considered view that in the following instances (illustratively and not exhaustively), applications seeking amendment of pleadings can be allowed without the "due diligence test," even if such applications are filed "*post-commencement of trial*."

Applications to:

(a) correct typographical errors in the dates of events, documents, etc.;

(b) correct property number, extent, location, or discrepancies in the boundary or any other misdescription of the property;

(c) insert events and developments that have taken place post-filing of the suit and which have a bearing on the final decision;

(d) incorporate a prayer owing to a subsequent event that has taken place during the pendency of the suit, keeping open the question of limitation;

(e) add a few additional facts or furnish better particulars to the facts already pleaded;

(f) add facts in support of the relief already claimed;

(g) seek relief in the alternative, which is in the nature of a lesser relief than the one already claimed. Example: In a suit for declaration of exclusive title and injunction, an application seeking the alternative relief of partition.

(h) Seek additional relief or relief ancillary to the main relief when the relief sought by way of amendment is available based on the pleadings already made.

26. In the aforementioned situations (broadly or generally speaking, excluding exceptional cases), in case the application seeking amendment of pleading is rejected on the premise that the applicant has not passed the "due diligence" test, it would cause injustice and would defeat the object of the first (main) part of Order VI Rule 17 of the Code, which aims at minimizing or avoiding multiplicity of litigation and provides for determining real questions in controversy between the parties.

27. To elaborate further, one of the situations named above is explained by way of an illustration, as under:

> *"In case a suit is filed over a property bearing **No. 101** and evidence is led in respect of property bearing **No. 110** which in fact should have been the suit property, and when the case is posted for final arguments, if an application is filed to correct the error to describe the property as property bearing **No. 110**, dismissal of the application on the premise that trial has already commenced and the*

applicant failed in the "due diligence test" serves no purpose."

28. The reason is, in case the suit is dismissed on the premise that property bearing No.101 does not belong to the plaintiff, the plaintiff can file another suit over the property bearing No.110, as there is no adjudication on property No.110. Such recourse has to be avoided. That is the purpose behind Order VI Rule 17 of the Code.

29. There is one more angle to hold that ***every*** application under Order VI Rule 17 of the Code "post commencement of the trial" need not undergo the due diligence test as contemplated in the proviso. Order VI Rule 17 of the Code was omitted in 1999. It was re-introduced in 2002, albeit with a restrictive proviso. However, re-introduced part still contains the expression ***"at any stage of the proceedings"***. Said expression is not replaced by the expression ***"before commencement of the trial"*** or any other suitable expression of giving similar meaning.

30. If the parliament really intended to create two different categories of applications seeking amendment of pleadings, one before commencement of trial, and one after commencement of trial, *with two different yardsticks for deciding such applications, and rigid test in all applications post commencement of trial*, then the Parliament probably would not have retained the expression ***"at any stage of the proceedings"*** in main part of Order VI Rule 17 of the Code. However, it is not so done. The expression which enables the Court to permit the amendment of the pleadings "***at any stage of the proceedings"*** is still retained in 2002 amendment. This is one of the reasons to hold that proviso to Order VI Rule 17 of the Code cannot be applied with same rigour to sail through "due diligence" test in *every* application seeking amendment, post commencement of trial.

31. Thus, the Court is of the view that a plain, grammatical interpretation and strict application of the proviso defeats the very object of the main provision which

aims at avoiding multiplicity of litigation. Such an interpretation cannot be adhered to in interpreting the proviso when the proviso has a limited role to play considering the object behind the proviso and the purpose of the main provision.

32. Moreover, Order VI Rule 17 of the Code is procedural law. It is a settled principle that procedural law has to be applied to serve the cause of justice, and that applies more rigorously to Order VI Rule 17 given the intent behind the first part of Order VI Rule 17, which still retains the expression ***"at any stage of the proceedings.***"

33. It is again a settled position of law, that amendment is permissible (in deserving cases) even in appellate stage. This again supports the view that the proviso has a limited role to play, when the amendment is sought post commencement of trial really to avoid multiplicity of litigation and resolve all the controversy between the parties connected to the *lis*.

34. Assuming that the proviso comes in the way of permitting amendment on account of a party failing to pass the "due diligence test," in a situation contemplated above in paragraphs No.25(a) to (h), the Court can certainly invoke its inherent power recognized and saved under Section 151 of the Code. The language of the provision— ***"Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice, or to prevent abuse of the process of the Court***"—enables the Court to pass such orders in the interest of justice.

35. In the instant case, the plaintiffs asserted to be the owners of the suit property and claimed to be in possession as of the date of the suit, and sought the declaration of title and injunction. In the year 2024, 10 years after the suit, and after cross-examination of PW2, amendment was sought to incorporate the plea that plaintiffs were dispossessed in 2022 and the additional relief

of possession. Whether the plaintiffs were dispossessed prior to the suit as alleged by the defendants, or during the pendency of the suit as alleged by the plaintiffs, is a matter of trial.

36. Thus, this is one such case where the "due diligence" test as provided under the proviso to Order VI Rule 17 of the Code does not assume importance, and in a situation brought in this case, the proviso has to yield to the main part of Order VI Rule 17 of the Code to achieve the purpose behind the provision providing for amendment. The Trial Court could not have dismissed the application seeking amendment to incorporate the prayer for possession and facts to support such a prayer merely because the trial had commenced.

37. **On the question of delay**: The Trial Court also dismissed the application on the premise that the application seeking amendment was filed 10 years after the suit.

38. While deciding the application seeking amendment of prayer, with reference to question of limitation, the test to be applied is whether the relief sought by way of amendment is barred by time as of the date of the application. While answering the question, the Court must consider whether the relief of sought by way of amendment is maintainable based on the facts already pleaded in the plaint. In such a situation where the relief sought by way of amendment flows from the facts already pleaded, the application to incorporate the new relief can be allowed even if, as of the date of the application, the relief is beyond the prescribed period of limitation.

39. Even otherwise, if the relief sought by way of amendment is sought based on new facts sought to be inserted by way of an amendment, then the Court has to consider whether the relief is time-barred or not as of the date of the application. If it is not clear as to when the cause of action arose or as to whether the relief is time-

barred or not, the Court may allow the application keeping open the question of limitation.

40. In the present case, the plaintiffs' application is anyway in time either under Article 64 or 65 of the Limitation Act, 1963 as application is filed within 12 years from the date on which the defendants assert to be in possession.

41. Hence, the application could not have been dismissed on the premise that it was filed after 10 years from the date of the suit. Once the application is found to be in time, in every case seeking amendment belatedly, the number of years spent before filing the application may not matter, but the nature of the amendment may matter.

42. In the present case, since the plaintiffs sought the relief of possession by way of amendment, delay of 10 years in filing the application seeking amendment is not fatal so as to warrant dismissal of the application. The Trial Court was carried away by the 10-year gap between the

date of the suit and the date of filing the amendment application while dismissing the application.

43. **On the question of amendment nullifying or being contrary to an admission in the cross-examination**:

In the instant case, the plaintiffs admitted in cross-examination to being dispossessed in 2014, while the suit was filed in 2015 for declaration and injunction. Based on that admission, one might assume dispossession occurred prior to the suit. The plaintiffs should have ideally sought the relief of declaration and possession; instead, plaintiffs sought declaration and injunction.

44. The application seeking amendment was filed in 2024 to seek the relief of possession, asserting that the dispossession occurred in 2022. This is apparently contrary to the admission in cross-examination.

45. To substantiate the dispossession in the year 2022, the plaintiffs rely on the statement of PW2.

46. The question is whether the Court must at the stage of application seeking amendment of pleading is required to determine the merits of the proposed amendment i.e., if dispossession occurred in 2014 or 2022. The law in this behalf is well-settled: the Court is not required to get into the merits of averments in the proposed amendment while considering the amendment application. There is no need to decide on the date of dispossession while considering the application seeking amendment. Thus, even if the plaintiffs have admitted in cross-examination that they were dispossessed in 2014 (i.e., prior to the suit), the application filed in 2024 seeking amendment to incorporate the plea for possession is necessary to decide the real controversy between the parties, as to when the dispossession took place.

47. As a matter of rule, one cannot urge that every amendment that seeks to nullify an admission in pleading or evidence is impermissible. Whether such application seeking amendment of pleading which tends to take away admissions in pleading or evidence are to be allowed or not must be decided keeping in mind the attending circumstances of the particular case. The reason is that admission may not always be conclusive. In appropriate cases, admission can be shown to be wrong or made on account of *bonafide* mistakes. In some cases, the admission may not have much bearing on the outcome of the proceeding.

48. In the case on hand, even if the admission in cross-examination that plaintiffs were dispossessed in 2014 is accepted as correct, the said admission does not take away the right of the plaintiffs to sue for possession. Thus, the amendment should have been allowed though averments in the proposed amendments appeared to be contrary to the admission in the cross-examination.

49. Permitting the amendment in this case does not "nullify" the admission. By permitting the amendment, the Court is not recording a finding that dispossession happened in 2022; that question remains a matter of trial. The defendants may still use the cross-examination to argue their case.

50. **On the contention that the amendment changes the nature of the suit:**

51. The Apex Court in ***Abdul Rehman and Another vs. Mohd. Ruldu and others***[5] has observed as under:

> *"18. We reiterate that all amendments which are necessary for the purpose of determining the real questions in controversy between the parties should be allowed if it does not change the basic nature of the suit.* ***A change in the nature of relief claimed shall not be considered as a change in the nature of suit and the power of amendment should be exercised in the larger interests of doing full and complete justice between the parties."***
>
> *(Emphasis supplied)*

It is relevant to notice that, in ***Abdul Rehman*** *(supra)*, the suit is filed in the year 2003, i.e., after the amendment of

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[5] (2012) 11 SCC 341

Code in the year 2002. The aforementioned judgment is rendered in the context of amended Order VI Rule 17 of the Code.

52. *The Apex Court in* ***Sampath Kumar vs. Ayyakannu and Another***[6] has held that the nature of the suit should not be misconstrued as the nature of the relief sought, as long as the basic structure to claim the relief remains the same. Similar is the view in ***Rajesh Kumar Aggrawal and others vs. K.K. Modi***[7]. Of course, both judgments were rendered in cases where pleadings were before the 2002 amendment to the Code. However, the Court would apply the ratio as the Court has taken the view *that the proviso to Order VI Rule 17 does not automatically apply to all cases seeking amendment, merely because the trial has commenced by the time amendment is sought*. The Court is of the view that the "due diligence test" laid down

[6] *2002 (7) SCC 559*
[7] *2006 (4) SCC 385*

in the proviso cannot apply in the situations explained in paragraphs 25(a) to (h) supra.

53. Assuming that the change of relief changes the nature of the suit, the principle that an amendment which changes the nature of the suit cannot be permitted cannot be applied as a "thumb rule" or like Statute, for rejecting an application seeking amendment which seeks to change the nature of the relief.

54. Sometimes, amendments seek to incorporate additional or modified prayers. In such situations, while the nature of the suit may change in form, in substance, the relief sought by way of amendment may be founded on the same fundamental facts or some additional facts. Such amendments are not barred under Order VI Rule 17 of the Code.

55. If the prayer sought to be incorporated is within the period of limitation prescribed, or if the existing pleadings form the foundation for additional or substituted

prayer, then notwithstanding the limitation, amendment should be permitted to prevent further litigation, though it may technically amount to a change in the nature of the suit—though in fact, it is only a change in the nature of the relief and not the nature of the suit, in substance.

56. In the instant case, even if the amendment is allowed, the basic claim that the plaintiffs are the owners and that the defendants have no title remains the same. The only additional question that requires an answer if the amendment is permitted would be, whether the plaintiffs were dispossessed in 2014 or in 2022. Thus, the amendment, if permitted, cannot be said to change the nature of the suit, although it changes the nature of the relief from declaration of title and injunction to declaration of title and possession.

57. Learned counsel for the plaintiffs relied on ***Life Insurance Corporation of India*** (*supra)*. In the aforementioned judgment, the Apex Court was dealing with

an application seeking amendment in a suit filed prior to the 2002 amendment to the Code. It laid down the parameters (in paragraphs No.71.2 to 71.10) to be followed while considering an application seeking amendment.

58. The Court is of the view that though the application seeking amendment in this case is governed by the amended Order VI Rule 17 of the Code, for the reasons recorded above, the ratio laid down in the aforementioned judgment does apply to the facts of the case, as the amendment sought in the suit is not controlled by the proviso to Order VI Rule 17 of the Code, even though the application was filed post-commencement of trial.

59. To sum up, the Court is of the view that the proviso to Order VI Rule 17 of the Code does not control the first part (unamended part) of Order VI Rule 17 in each and every application filed post-commencement of trial though it must be applied in some cases. Merely because the trial has commenced and the party seeking amendment failed the

due diligence test cannot be the sole criterion to reject the application seeking amendment.

60. Even if the party fails to satisfy the said due diligence test, (in an application seeking amendment post commencement of trial), party is entitled to seek amendment of pleadings;

(a) if such amendments are necessary to decide the real questions in controversy,

and

(b) subject to fulfilling other well-settled criteria in terms of the law declared under the unamended provision if the application seeking amendment falls under the category of cases broadly illustrated in **paragraph No.25(a) to (h)** (*supra)*.

61. It is made clear that the cases, in which the proviso to Order VI Rule 17 of the Code applies, warranting dismissal of the application, are not enumerated in this order. The Court has broadly discussed the nature of amendments where the application seeking amendment has

to be allowed, even where the party fails to satisfy the ***due diligence test*** required under Order VI Rule 17 of the Code.

62. The Court sitting in this jurisdiction has noticed that many times, Trial Courts have been dismissing applications as if the Courts hardly have any power to permit amendments after the commencement of trial. Sometimes the amendments are not allowed when such applications are filed at the stage of final arguments, probably for the reason that the case may not be available for early disposal if amendments are permitted. Such an approach is not desirable.

63. If a proposed amendment requires to be permitted keeping in mind the law governing amendment, the same should be permitted notwithstanding the short-term consequence of a little delay or inconvenience to the opposing party. Such aspects can be taken care of by

passing suitable orders on costs and putting the party seeking amendment on other suitable terms.

64. Considering the facts and circumstances of this case, the Court is of the view that the plaintiffs should be directed to pay cost of Rs.7,000/- to the defendants as a condition precedent to amend the plaint.

65. **CONCLUSION:**

(a) The **due diligence test** contemplated in proviso to Order VI Rule 17 of the Code, cannot have universal application on every application seeking amendment of pleadings, filed after commencement of trial. In appropriate cases, (broadly illustrated in paragraph No.25 *supra*) even if due diligence test is not satisfied, the Court's power to permit amendment of pleadings is not taken away.

(b) In deserving cases, the Court may even resort to its inherent power (though not expressly invoked by the

party) to permit amendment on such terms to do complete justice.

66. Hence the following:

ORDER

i. The Writ Petition is ***allowed***.

ii. The impugned order dated 06.09.2025 passed on I.A.No.7 filed under Order VI Rule 17 Code of Civil Procedure, in O.S.No.188/2015 on the file of the Additional Civil Judge, Hungund, vide Annexure-E, is set aside.

iii. The application seeking amendment of plaint is allowed subject to plaintiffs paying cost of Rs.7,000/-

iv. Defendants are permitted to file additional written statement.

v. It is made clear that the Court has not expressed any opinion as to whether plaintiffs have been dispossessed in the year 2014 or in the year 2022. That question has to be decided based on the evidence.

Sd/-
(ANANT RAMANATH HEGDE)
JUDGE

Gab/CT-MCK/LIST NO.: 1 SL NO.: 33