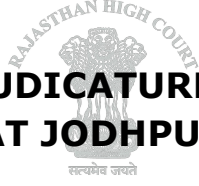




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**



S.B. Civil Writ Petition No. 17948/2019

CNR: RJHC010810142019 | URN: CW / 38392U / 2019

1. Kundan Mal S/o Chiman Lal Ji, Aged About 76 Years, B/c Jain, R/o Village Khivandi, Tehsil Sumerpur, District Pali, Rajasthan, Presently At Meghdut Complex, Sirpal Nagar, Sumerpur, District Pali.
2. Mansukh Lal S/o Chiman Lal Ji, Aged About 71 Years, B/c Jain, R/o Village Khivandi, Tehsil Sumerpur, District Pali, Rajasthan. Presently At Ivy-201, Nahar Amrit Shakti, Chandiwali Farm Road, Near Jain Temple, Chandiwali, Andheri (East), Mumbai-400072 Maharashtra.

-----Petitioners

Versus

1. Narpat Singh S/o Lal Singh, Aged About 49 Years, B/c Rajput, R/o Village Khiwandi, Tehsil Sumerpur, District Pali, Rajasthan.
2. Legal Representative Of Late Shri Pukh Raj S/o Chiman Lal, B/c Jain, R/o Khiwandi.
3. Legal Representative Of Kishan Lal S/o Chiman Lal Ji, B/c Jain, Resident Of Khivandi.
4. Legal Representative Of Peraj Mal S/o Chiman Lal Ji Jaini, R/o Village Khivandi, Tehsil Sumerpur, District Pali Rajasthan.
5. Legal Representative Of Late Shri Deep Chand S/o Chiman Lal Ji Jain, B/c Jain, R/o Khiwandi.
6. Pawan Jain D/o Chiman Lal Ji, W/o Vinod Ji, B/c Jain, R/o Through Suresh Jain, Happy Home Complex, Tower No. 2, Flat No. 701, New Link Road, Chipoli, Boriwali (West) 92 Mumbai Maharashtra).
7. Dimple D/o Late Shri Pukhraj Ji, W/o Lalit Jain, B/c Jain, R/o Randhari Building, Second Flour, Room No. 11, Nm, Joshi Marg, Dilai Road, Mumbai-13
8. Rekha D/o Late Shri Pukhraj Ji, W/o Vijay R Shah, B/c Jain, R/o 701 Pratap Haritej, Sv Road, Borivali, (West) Mumbai.
9. Helan D/o Late Shri Pukhraj Ji, W/o Bhupesh Madani, B/c Jain, R/o Plot No. 85, D-6, Gorai Post-1, Vishram



Cooperative Society, Borivali (West) Mumbai-92.

10. Laxmi D/o Late Shri Pukhraj Ji, W/o Nilesh Oswal, B/c Jain, Resident Of C/o Champa Lal Dhanji Oswal, 749, Dharampuripet, Mahaveer Chowk, Village And Post Y. District Satara, Maharashtra 412803.
11. Devi W/o Late Shri Pukhraj Ji, B/c Jain, R/o Khivandi, Tehsil Sumerpur. District Pali Rajasthan. Presently At Ground Flour, Jamani Gali, Pethiyawadi, Borivali (West) Maharashtra.
12. Geeta W/o Kishan Lal Ji, B/c Jain, R/o Village Khivandi, Tehsil Sumerpur, District Pali, Rajasthan.
13. Harish S/o Kishan Lal Ji, B/c Jain, R/o Village Khivandi, Tehsil Sumerpur, District Pali, Rajasthan.
14. Kamlesh S/o Kishan Lal Ji, B/c Jain, R/o Village Khivandi, Tehsil Sumerpur, District Pali, Rajasthan.
15. Padma D/o Kishan Lal Ji, W/o Dilip Jain, B/c Jain, R/o Village Khivandi, Tehsil Sumerpur, District Pali Rajasthan. Presently C/o Kanti Lal Mangi Lal, Village Post Dholwar, District Thana (Maharashtra).
16. Legal Representative Bharat Kumar S/o Kishan Lal Jain, Karan S/o Bharat Kumar, B/c Jain, R/o Village Khivandi, Tehsil Sumerpur, District Pali (Rajasthan).
17. Jitendra Jain S/o Peraj Mal Ji, B/c Jain, R/o 69-7 Harmani Apartment, Akhsa Village, Mud Iland, Malad (West), Mumbai Maharashtra.
18. Sudhir Jain S/o Peraj Mal Ji, B/c Jain, R/o Plot No. 478-A(13) Road, Matraesamarthi Building, Rapa-Khan Vilcut, Near To Kharjimkhana, Khar (West) Mumbai.
19. Madhubala D/o Peraj Mal Ji, W/o Sanjeev Kumar Jain, B/c Jain, R/o Oasis, Sushila Bhawan, Near To Kvk, Mahaveer Colony, Bhilwara- 311001, Rajasthan.
20. Hemant S/o Deep Chand Ji, B/c Jain, R/o Pleasant Palace, 102, Sodawala Building Borivali (West) Mumbai (Maharashtra).
21. Sanjay S/o Deep Chand Ji, B/c Jain , R/o C-201, Gundesa, Velly Of Flower Thakur Village, Kandhiwali (East) Mumbai Maharashtra.
22. Kushum D/o Deep Chand Ji, W/o Vikram Ji, B/c Jain, R/o



Rokadiya Apartment, Rokadiya Lane, Pai Nagar, Boriwali (West), Mubai Maharastra.

23. Lata D/o Deep Chand Ji, W/o Sanjay Ji, B/c Jain, R/o C-201, Shayam Tirath Near To Chandan Plot, Jodhpur Dham, Ahamdabad Gujrat.

-----Respondents



For Petitioner(s) : Mr. Girish Sankhla
For Respondent(s) : Ms. Ayushi Rathore
Mr. Bharat Singh Rathore

HON'BLE MR. JUSTICE FARJAND ALI

Order

REPORTABLE

DATE OF CONCLUSION OF ARGUMENTS	10/07/2026
DATE ON WHICH ORDER IS RESERVED	10/07/2026
FULL ORDER OR OPERATIVE PART	Full Order
DATE OF PRONOUNCEMENT	21/08/2026

BY THE COURT:-

1. By way of the instant writ petition under Article 227 of the Constitution of India, the petitioner-plaintiff has assailed the order dated 21.10.2019 passed in civil Original Case No.7/2014 by the learned Sr. Civil Judge cum ACJM, Sumerpur, District Pali whereby the application preferred by defendant No.1 under Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short, "the CPC") has been allowed and the defendant has been permitted to carry out the proposed amendment in his written statement.
2. For adjudication of the present writ petition, the relevant facts, shorn of unnecessary details, are that the plaintiffs instituted a civil suit seeking recovery of possession, perpetual injunction and compensation in respect of the suit property,



asserting common rights and possession therein along with defendant Nos.2 to 6 and alleging encroachment and transgression by the defendants. Defendant No.1, Narpat Singh, had already filed his written statement; however, by application dated 17.03.2018 under Order VI Rule 17 CPC, he sought amendment thereof by incorporating the plea that late Chimanlal had bequeathed the property to his daughter-in-law, Smt. Geetabai, who, after his demise, acquired possession and subsequently transferred the property to defendant No.1 by registered sale deed dated 19.07.2003, pursuant to which he claimed continuous possession and absolute right, title and interest therein. The proposed amendment further sought to plead that the plaintiffs had neither challenged the Will dated 10.04.1988 and sale transaction dated 19.07.2003 nor sought an appropriate declaration of title and, consequently, the suit, as framed, was not maintainable. The amendment was opposed by the petitioner-plaintiff principally on the ground that, after framing of issues and at the stage of evidence, introduction of such new pleas was impermissible under the proviso to Order VI Rule 17 CPC, particularly when the defendant had the opportunity to raise them in his original written statement.

2.1. Learned trial Court, upon consideration of the application and the objections thereto, noticed that the evidence in the suit had not yet commenced. The learned trial Court further found that permitting the proposed amendment would not cause any substantial or irretrievable prejudice to the plaintiff and that the subject matter and nature of the suit would remain unchanged. It





was in that backdrop that the application under Order VI Rule 17 CPC came to be allowed. Hence the instant writ petition.

3. Heard learned counsel for the parties and perused the impugned order as well as the material placed on record.

4. The controversy essentially centres around the permissible ambit of Order VI Rule 17 CPC in a case where an amendment in the written statement is sought after framing of issues but before commencement of evidence. The question is not merely whether the proposed pleading could have been incorporated at an earlier stage; the Court is also required to ascertain whether the amendment is necessary for determining the real questions in controversy, whether it alters the fundamental character of the suit, whether it introduces an inconsistent defence, and whether its allowance would cause such prejudice to the opposite party as cannot adequately be addressed in the ordinary course of trial.

4.1. There can be no quarrel with the proposition that Order VI Rule 17 CPC incorporates an important procedural safeguard. The proviso thereto mandates that after commencement of trial, an amendment shall not ordinarily be allowed unless the party seeking such amendment demonstrates that, notwithstanding the exercise of due diligence, the matter could not have been raised before commencement of trial. The legislative purpose underlying the proviso is manifest: a litigant cannot be permitted to adopt a leisurely or belated approach to pleadings and, after the trial has substantially progressed, seek to recast the case to the prejudice of the opposite party or to prolong the proceedings.



4.2. However, the said proviso cannot be construed as an inflexible and mechanical prohibition against every amendment after settlement of issues. The expression "*commencement of trial*" has a definite procedural significance, and the Court is required to examine the actual stage of the proceedings rather than proceed merely on the premise that issues have already been framed. In the present case, the learned trial Court has specifically recorded that evidence had not commenced. That factual circumstance assumes considerable significance while examining the propriety of the impugned order.

4.3. The fundamental object of permitting amendment of pleadings is to ensure that the Court is furnished with the complete factual and legal canvas necessary for resolving the real controversy between the parties. Procedural law is a handmaid of justice and is not intended to become an instrument by which a material defence, otherwise legally available to a party, is shut out without examination. The Court must, therefore, adopt an approach which neither permits indiscriminate alteration of pleadings nor sacrifices substantial justice at the altar of procedural technicality.

4.4. In the considered view of this Court, where an amendment is sought in a written statement before commencement of evidence, and such amendment is directed towards elaborating the defence or placing the necessary factual foundation for a legal objection before the Court, the same cannot be rejected merely because the issues have already been framed. The decisive consideration is



whether the amendment changes the substratum of the litigation or merely furnishes greater particulars and a more complete articulation of the stand already taken.

4.5. Tested on the aforesaid parameters, the proposed amendment in the present case does not alter the subject matter of the suit. The suit continues to concern the same property. The plaintiffs continue to seek the same substantive reliefs. The dispute as to the parties' respective rights, possession and entitlement to consequential relief remains unaltered. No new property is introduced; no new cause of action is substituted; and the reliefs claimed in the plaint are not sought to be transformed by the proposed amendment.

4.6. Equally, the proposed amendment does not alter the territorial or pecuniary jurisdiction of the Court. It does not seek to carry the litigation to a different forum, nor does it create a jurisdictional controversy which was absent from the original suit. The amendment, therefore, does not have the effect of changing the forum, nature or foundational jurisdiction of the proceedings.

4.7. What the defendant seeks to do is to place before the Court, with greater clarity and elaboration, the factual foundation of his defence regarding the origin of his claimed title, the Will in favour of Smt. Geetabai, the subsequent transfer in his favour, the alleged delivery and continuity of possession, and the legal consequence which, according to him, follows from those transactions. Such pleading is directly connected with the controversy already brought before the Court by the parties.



5. A civil Court is expected, as far as legitimately possible, to bring the litigation between the parties to a complete and effective conclusion. Multiplicity of proceedings is not ordinarily to be encouraged where the entire controversy can appropriately be adjudicated in the existing suit. If a material factual or legal aspect bearing upon the determination of the core controversy is sought to be placed on record, the Court should not ordinarily shut it out unless its introduction is prohibited by law or would cause demonstrable and substantial prejudice to the opposite party.

5.1. The objection concerning maintainability assumes particular significance in this context. If a defendant seeks to raise a legal objection that the suit, as framed, is not maintainable in the absence of a particular declaratory or cancellation relief, such objection goes to the root of the proceedings. A legally permissible objection touching the very maintainability of the suit ought not ordinarily to be kept outside consideration merely because the defendant failed to articulate it with requisite specificity in the original written statement, particularly where the evidence has not commenced and the opposite party can still effectively meet the plea.

5.2. Of course, the Court cannot permit a party to introduce an entirely new and destructive case under the guise of raising a legal objection. But where the legal objection arises from the very factual foundation of the defence and does not displace the earlier stand, the amendment may legitimately be allowed so that the Court can determine the controversy in its entirety.



5.3. In the present case, the proposed amendment cannot be characterised as an attempt to introduce a completely new factual position. The defendant is not abandoning the defence previously taken and substituting an entirely incompatible defence in its place. Rather, the earlier defence is sought to be amplified, particularised and placed before the Court with greater clarity. The proposed pleadings concerning title, possession and the legal consequences flowing therefrom constitute an elaboration of the defence rather than its wholesale replacement.

5.4. The principle governing amendment of written statements is also somewhat distinct from the considerations which ordinarily arise in the case of an amendment of a plaint. While the statutory safeguards remain equally applicable, the Court may adopt a comparatively liberal approach where the amendment in the written statement does not cause irreparable prejudice and enables the defendant to place his complete defence before the Court. The proposed amendment in the present case satisfies that test.

6. Learned counsel for the petitioner has placed reliance upon the judgment of the coordinate Bench ***in Omprakash v. M/s Yash Motors Registered Partnership Firm, reported in Law & Verdict 2017 Raj 28084***. The said judgment, however, does not advance the case of the petitioner. As noticed from the material placed before this Court, the amendment in that case was declined because the proposed alteration had the effect of



changing the factual position and the fundamental stand of the defendant.

6.1. The ratio of the said decision is undoubtedly unexceptionable to the extent that a defendant cannot be permitted to use the procedural device of amendment to abandon his original defence and introduce a wholly inconsistent factual foundation at a belated stage. But the principle has no application where the proposed amendment does not displace the existing defence and instead merely elaborates it.

6.2. The distinction is material. In the present case, the defendant's factual position and the substance of his defence remain intact. What is sought to be incorporated is a more comprehensive narration of the circumstances on which the defence rests, together with the legal objection flowing from those circumstances. The amendment does not transform the factual complexion of the defence; it merely gives it greater precision and completeness. Consequently, the judgment in ***Omprakash*** (supra) does not render the impugned order vulnerable.

6.3. The reliance upon ***Ramgopal v. ACJM No.2, Bikaner, reported in Law & Verdict 2019 Raj 15261***, is equally misplaced. The said decision arose in the context of an election petition, where the Court emphasised that, having regard to the peculiar statutory character of election litigation, an ultra-liberal approach towards amendment should be eschewed and a comparatively conservative approach should be adopted.



6.4. The present case stands on an entirely different footing. It concerns an ordinary civil suit relating to asserted civil rights in immovable property and does not arise from an election petition or any special statutory proceeding having a similarly circumscribed framework. More importantly, the proposed amendment here does not enlarge the subject matter or alter the foundational structure of the suit. The plaintiffs' cause remains the same, the property remains the same and the reliefs remain the same. The amendment merely enables the defendant to contest the plaintiffs' claim by placing additional particulars and a legal objection on record.

6.5. The principle that an amendment which changes the very basis or structure of litigation may not be permitted cannot be transposed mechanically to a case where no such transformation takes place. The judgment in **Ramgopal** (supra), therefore, does not assist the petitioner.

6.6. This Court also finds itself in respectful agreement with the principle enunciated by the coordinate Bench in **Harjeet Kaur v. Jasmin Kaur, reported in Law & Verdict 2026 Raj 15048**.

The observations therein underscore the object and purpose of Order VI Rule 17 CPC, namely, to facilitate complete, effective and conclusive adjudication of the dispute in a single proceeding, so that the real controversy may be determined and unnecessary multiplicity of litigation avoided.

6.7. The legislative intent behind the provision cannot be lost sight of. An amendment which is necessary for determining the



real question in controversy ought ordinarily to be permitted where it does not cause irreparable prejudice to the opposite party. The Court must endeavour to ensure that the lis is adjudicated upon in its entirety and that the final judgment is rendered upon the complete case of the parties rather than upon an artificially truncated pleading.

6.8. This Court is conscious of, and in complete agreement with, the principle reiterated in **Harjeet Kaur** (supra) that once trial has commenced, the proviso to Order VI Rule 17 CPC assumes full significance and the party seeking amendment must demonstrate due diligence in not raising the matter earlier. That statutory requirement cannot be diluted.

6.9. Nevertheless, the factual position in the present case is materially different. The learned trial Court has specifically noticed that the evidence had not commenced. Thus, the case does not present a situation where a party, after the plaintiff has concluded his evidence or after the evidentiary stage has substantially progressed, seeks to introduce a new case. The amendment is being sought in the written statement at a stage where the plaintiff would still have full opportunity to contest the additional pleadings and lead evidence in response thereto.

6.10. It is also significant that the proposed amendment does not alter the subject matter of the suit. Rather, it furnishes a more elaborate exposition of the defence in response to the assertions already contained in the plaint. In substance, therefore, the amendment is directed towards placing the existing controversy in



a more complete factual and legal perspective before the learned trial Court.

6.11.The principle enunciated in ***Laxman Singh v. Civil Judge (J.D.), Deogarh, reported in Law & Verdict 2008 Raj 6227***, also does not militate against the impugned order. This Court is in complete agreement with the proposition that an amendment should not cause prejudice to the opposite party, that the amended pleading should not be inconsistent with the earlier pleading, and that a defendant cannot be permitted to introduce an incompatible or mutually destructive defence under the cloak of an amendment. But the essential question is whether the proposed amendment in the present case suffers from any such vice. In the considered opinion of this Court, it does not. The amendment is not inconsistent with the earlier defence. It does not amount to a repudiation of the stand previously taken. Rather, the defence already placed before the Court is sought to be presented with greater particulars, clarity and legal articulation. The proposed pleading, therefore, cannot be described as an incompatible defence; it constitutes a legitimate defence which the defendant seeks to place before the Court in its complete form.

6.12.The concept of prejudice must also be understood in its proper legal sense. Mere inconvenience or the necessity of answering an additional pleading does not, by itself, amount to the kind of prejudice which warrants rejection of an otherwise permissible amendment. Prejudice contemplated by law is



prejudice which cannot effectively be compensated or remedied by granting an appropriate opportunity to the opposite party.

6.13. In the present case, no such irreparable prejudice is discernible. Since recording of evidence has admittedly not commenced, the plaintiff would have adequate opportunity to file an appropriate response to the amended written statement, to seek consequential amendment of issues if legally necessary, and to lead evidence in rebuttal. Thus, the procedural balance between the parties remains capable of being fully preserved.

6.14. It is equally relevant that the learned trial Court has exercised its discretion upon consideration of the actual stage of the proceedings and the nature of the proposed amendment. The Court has not mechanically allowed the application. It has noticed the absence of commencement of evidence and the fact that the subject matter of the suit would remain unaffected. Such exercise of discretion, unless shown to be perverse, arbitrary or contrary to the statutory framework, does not warrant interference in supervisory jurisdiction.

7. The jurisdiction of this Court under Article 227 of the Constitution of India is supervisory and not appellate. The High Court does not ordinarily substitute its own discretion for that of the subordinate Court merely because another view may conceivably be taken. Interference is warranted only where the subordinate Court has acted without jurisdiction, exceeded the bounds of its jurisdiction, failed to exercise jurisdiction vested in



it, or exercised such jurisdiction in a manner manifestly arbitrary, perverse or resulting in grave miscarriage of justice.

7.1. Viewed from this constitutional and procedural perspective, the impugned order does not suffer from any such infirmity. The learned trial Court has exercised jurisdiction vested in it under Order VI Rule 17 CPC, taken into account the stage of the proceedings, considered the effect of the proposed amendment and found that the same would neither alter the subject matter of the suit nor cause prejudice to the plaintiff. The exercise of discretion is thus neither capricious nor legally unsustainable.

7.2. The Court is also required to bear in mind that the object of a trial is not to determine how skilfully or otherwise the pleadings were originally drafted, but to adjudicate the substantive rights and obligations arising from the controversy brought before it. Where a material defence is sought to be brought on record before commencement of evidence and its introduction does not alter the nature of the proceedings, a refusal to permit such amendment may, in appropriate circumstances, result in the Court deciding the dispute upon an incomplete factual foundation.

7.3. At the same time, it is made clear that the observations herein are confined strictly to the permissibility of the amendment. This Court has not examined, nor does it express any opinion upon, the genuineness, validity or legal effect of the Will dated 10.04.1988, the sale transaction dated 19.07.2003, the subsequent transaction dated 12.09.2005, the alleged delivery of possession, the rival claims of title, or the ultimate question of



maintainability of the suit. All such questions shall remain open to be examined by the learned trial Court in accordance with law and on the basis of the pleadings and evidence ultimately brought on record.

7.4. On a conspectus of the entire matter, this Court is of the considered opinion that the amendment permitted by the learned trial Court neither changes the subject matter of the suit nor alters its nature, scope or reliefs; neither creates any new cause of action nor affects the territorial or pecuniary jurisdiction of the Court; and neither substitutes the existing defence with an incompatible one nor causes any irreparable prejudice to the petitioner-plaintiff.

7.5. On the contrary, the amendment enables the defendant to place before the learned trial Court a more complete factual and legal foundation of his defence, including the objection touching upon the maintainability of the suit. Since the evidence has not commenced, the plaintiff continues to possess a full and effective opportunity to meet the amended pleading. The amendment, therefore, advances rather than frustrates the cause of substantial justice.

7.6. In the ultimate analysis, the impugned order represents a legitimate exercise of judicial discretion within the contours of Order VI Rule 17 CPC. The learned trial Court has neither permitted an impermissible transformation of the suit nor allowed the defendant to introduce a mutually destructive defence. The amendment is germane to the controversy, necessary for a



complete adjudication of the rival claims and incapable of causing such prejudice as would justify its rejection.

7.7. Consequently, this Court finds no jurisdictional error, perversity, illegality or material irregularity in the impugned order warranting interference in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

8. Accordingly, the instant writ petition, being devoid of merit, is dismissed. The order dated 21.10.2019 passed in civil Original Case No.7/2014 by the learned Sr. Civil Judge cum ACJM, Sumerpur, District Pali whereby the learned trial Court permitting defendant No.1 to amend his written statement under Order VI Rule 17 CPC is hereby affirmed.

8.1. It is, however, clarified that the observations made hereinabove are confined to the question of permissibility of the amendment and shall not be construed as an adjudication, even prima facie, upon the merits of the rival claims of the parties. The learned trial Court shall proceed with the suit uninfluenced by any observation contained in this order and shall determine all questions arising therein strictly in accordance with law and on the basis of the pleadings and evidence available before it.

8.2. The stay petition and all pending applications, if any, shall stand disposed of. No order as to costs.

(FARJAND ALI),J

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