

(2026) 08 BOM CK 3192
In the Bombay High Court, Nagpur Bench
Case No : Writ Petition No.4244 of 2025

Smt. Sadhna Wd/o Anil Jawade & Anr.	APPELLANT
Vs	
Dr. Rajesh Shridharrao Jawade	RESPONDENT

Date of Decision : 04-08-2026

Acts Referred:

Code of Civil Procedure, 1908 — Order 2 Rule 2, 6 Rule 17
Evidence Act

Citation : (2026) 08 BOM CK 3192

Hon'ble Judges : M.W. Chandwani, J

Bench : Single Bench

Advocate : Shir Sunil Manohar, Shri Kuldeep Mahalle, Mrs. Gauri Venkatraman

Final Decision : Allowed

Judgement

1. Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

2. The petitioners challenge the order dated 03.05.2025 passed by Joint Civil Judge, Senior Division, Amravati in Special Civil Suit No.192/2024 below Exh.56, whereby the application for amendment filed by the petitioners (original plaintiffs) was partly allowed, the proposed amendment mentioned in para 17A, 17B and 17G was allowed and the amendment mentioned in para 17C to 17F of the application was rejected.

3. The plaint depicts that the Jawade family owned Nazul plot No.7, Sheet No.36 which is known as "Jawade compound" at Maltekade Road, Amravati. The said plot was big and hence, it was sub-divided into six plots with a common passage and a common well to be jointly owned and to be used by the six plot holders. The petitioners are legal heirs of deceased Anil Jawade who became the owner of two plots i.e. Plot Nos.1 and 2 through his predecessor-in-title Shridharrao Jawade. The petitioners and their predecessor were using the said passage since 1958. However, recently the respondent (original defendant) brother of deceased

Anil is intending to make construction on the said passage and therefore, a suit was filed for declaration that the common passage shown in the plaint map as "ABCD A" and "EFGHE" are jointly owned by the petitioners and the respondent with the consequential relief of permanent injunction not to make any construction on the common passage "EFGHE". The respondent appeared and filed his written statement wherein, he denied the claim of the petitioners. In the written statement, it was admitted that there was a common passage of 15 feet in width; however, it was alleged that the said common passage has already been encroached upon by the predecessor-in-title of the petitioners and now, the petitioners are misleading the Court by showing the private portion of plot nos.3 and 4 of the respondent as a common passage. The respondent also filed a counter-claim before the Court seeking declaration and permanent injunction to restrain the petitioners from making any sort of construction. The petitioners filed a written statement to the counter-claim. The petitioners also filed an application for amendment (Exh.56) to the plaint alongwith an alternate prayer of permanent injunction restraining the respondent from making any construction on the remaining portion of the common passage which is shown as "EGHIE".

4. To appreciate the arguments of the learned counsel for the parties, it will be apt to describe the real dispute between the parties in detail. The petitioners have claimed the common passage between plot Nos.1 and 3 and 4 which is described by the petitioners in their plaint map as "EFGHE". The respondent has come-up with a case that while the predecessor-in-title of the petitioners was making construction of the Mangal Karayalaya, he encroached upon the portion of the common passage and the petitioners are now using the portion of Plot Nos. 3 and 4 owned by the respondent as common passage. By way of counter-claim, the respondent sought removal of the said encroachment and also sought injunction restraining the petitioners from using the portion of plot Nos. 3 and 4 as common passage. As stated above, by way of the earlier application, the petitioners sought inclusion of the alternate prayer asking for declaration of joint ownership on the common passage as well as restraining the respondent from making construction on the portion, which was shown with the letters "EGHIE", apart from the primary prayer of declaration and injunction in respect of "EFGHE". Consequently, the respondent also amended the written statement and brought some additional facts in the written statement and the counter-claim. Thereafter, the petitioners filed an application for incorporation of additional facts in respect of the common passage in view of the amendment to the written statement and the counter-claim and also claimed easementary right on the common passage by way of prescription.

5. With this clarity on the pleadings and the sequence of events, it will be appropriate to proceed to deal with the submissions of the respective counsel.

6. Mr. Sunil Manohar, learned Senior Advocate appearing on behalf of the petitioners vehemently submitted that in wake of the facts brought on record by

the respondent in the written statement as well as the counter-claim whereby, it has been claimed that the common passage shown in the plaint map with letters "EFGHE" is allegedly encroached upon by the petitioners and the portion of plot Nos.3 and 4 is being used by the petitioners to ingress and egress, the petitioners incorporated the alternate prayer for injunction in respect of the same passage (EGHIE) which is adjacent to the passage claimed by the respondent (EFGHE). It may either be a common passage shown as "EFGHE" or it may be a portion of plot Nos. 3 and 4 shown as "EGHIE". As an abundant precaution, an alternate prayer is incorporated to bring the fact on record that the passage is being used by the petitioners and their predecessor since the year 1958, even if the said passage is a part and parcel of plot Nos.3 and 4. It is also submitted that some additional facts have been brought on record by the respondent, therefore, the present amendment application for clarifying the facts in support of the prayer clauses has been sought from the trial Court. According to him, the trial Court has erroneously rejected the amendment in respect of para 17 (C) to 17(F) of the application. According to him, once the alternate prayer has already been allowed to be incorporated, then Court should not have rejected the application. He submits that the trial is yet to commence and the Court shall allow every amendment liberally. The only rider is that withdrawal of an admission cannot be allowed, which is not the case here.

7. He strenuously submitted that the Court has erroneously come to the conclusion that by way of amendment, the admission in the plaint is being withdrawn. According to him, considering the defence of the respondent, the alternate prayer was made. Once the alternate prayer was allowed to be incorporated, then there was no reason for rejecting the application for incorporating the facts which are sought to be added to clarify the position in support of the alternate prayer.

8. Per contra, Mrs. Venkatraman, learned counsel appearing for the respondent submitted that the facts pleaded on record by the respondent clearly demonstrate that the petitioners encroached upon the common passage and are now using the land which part and parcel of plot Nos. 3 and 4 as the common passage. According to her, initially, the petitioners have come-up with a specific case of common passage and sought declaration of joint ownership on the common passage. Now, by way of the proposed amendment, they are introducing a new case of easementary right. Therefore, the trial Court has rightly rejected the application holding that it will amount to withdrawal of admission. She sought rejection of the petition as it will change the nature of the suit.

9. Having heard the learned counsel for the respective parties and having gone through the record, it appears that the trial Court refused to allow the amendment of the petitioners by which they were seeking to insert Paras 17(C) to 17(F) on account that the petitioners are trying to wash out the valid defence raised by the respondent by way of the counter-claim and are trying to

incorporate a new case which is inconsistent with the earlier pleadings of the petitioners, which will certainly cause prejudice to the respondent. The trial Court also observed that by the said amendment, the petitioners are attempting to change the nature of the suit by introducing a new case.

10. It is to be noted that a plaintiff is the dominus litis. He is the master of his plaint. The Supreme Court and this Court, in a series of decisions has held that the power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interest of justice. The parties to the suit are permitted to bring forward amendment of their pleadings at any stage of the proceedings for the purpose of determining the real question in controversy between them. The courts have to be liberal in accepting the same, if the same is made prior to the commencement of the trial. If such application is made after the commencement of the trial, in that event, the court has to arrive at a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. The object of the rule is that courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties, provided that it does not cause injustice or prejudice to the other side. The main purpose of allowing the amendment is to minimise the litigation. It is settled law that if necessary factual basis for amendment is already contained in the plaint, the relief sought on the said basis would not change the nature of the suit. All amendments which are necessary for the purpose of determining the real question in controversy between the parties should be allowed if they do 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.

11. In the case of LIC Vs. Sanjeev Builders (P) Ltd. 1, the Supreme Court after considering various judgments, has observed as under:

"71. Our final conclusions may be summed up thus:

71.1. Order 2 Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order 2 Rule 2CPC is, thus, misconceived and hence negated.

71.2. All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order 6 Rule 17 CPC.

71.3. The prayer for amendment is to be allowed:

71.3.1. If the amendment is required for effective and proper adjudication of the controversy between the parties.

71.3.2. To avoid multiplicity of proceedings, provided (a) the amendment does not result in injustice to the other side, (b) by the amendment, the parties seeking amendment do

not seek to withdraw any clear admission made by the party which confers a right on the other side, and (c) the amendment does not raise a time-barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

71.4. A prayer for amendment is generally required to be allowed unless:

71.4.1. By the amendment, a time-barred claim is sought to be introduced, in which case the fact that the claim would be time-barred becomes a relevant factor for consideration.

71.4.2. The amendment changes the nature of the suit.

71.4.3. The prayer for amendment is mala fide, or

71.4.4. By the amendment, the other side loses a valid defence.

71.5. In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

71.6. Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

71.7. Where the amendment merely sought to introduce an additional or a new approach without introducing a time-barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

71.8. Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

71.9. Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

71.10. Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

71.11. Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See *Vijay Gupta v. Gagninder Kr. Gandhi* [Vijay Gupta v. Gagninder Kr. Gandhi, 2022 SCC OnLine Del 1897])”

12. Here in this case, initially, the petitioners sought the relief of joint ownership of the common passage which was shown in the map with the letters “EFGHE”. When the respondent came with a defence in his written statement and counter-claim that a strip of the passage of 15 X 258 feet which was consented by the respondent and his brother to their father who was the predecessor-in-title of deceased Anil. Their father was encroached upon the portion of common passage when the construction of the Mangal Karyalaya was done. The respondent also

came-up with a defence that the existing passage is a part and parcel of plot Nos.3 and 4 and is being encroached upon by the petitioners under the guise that it is a common passage. Therefore, the respondent sought removal of encroachment from the strip of land of common ownership also sought injunction to restrain the petitioners permanently from using the passage which is the portion of plot Nos.3 and 4. Thereafter, the petitioners sought to incorporate an alternate prayer by correcting the map on record. Thus, by way of alternate prayer, the petitioners are seeking the prayer in respect of the strip of existing passage other than the one which is allegedly encroached upon i.e. the passage shown with letters "EGHIE", which appears to be an alternate prayer. By the present application (Exh.56), the pleadings which are sought to be incorporated in the form of Para 17 (C) to 17(F) are in support to their main prayers as well as to the alternate prayer to justify the prayers and to show the exact location of the gate. No doubt, the petitioners have also pleaded an additional fact of using the passage since 1958 for their ingress and egress as a necessity and are also claiming the right of easement, but that perhaps may be an alternate submission in support of their claim.

13. In this regard, it will be appropriate to refer to the decision of this Court in the case of Dadabhau Shankar Ghodke and Ors. vs Mohanlal Kanhyalal Agrawal and Anr. 1 wherein, it has been held that a plaintiff is entitled to take alternate pleas whether consistent, complementary or inconsistent. The relevant para 15 is reproduced as under:

"15. In the aforesaid three cases, the respective High Courts were not confronted with the issue, if the Court can direct a party, either while leading its evidence or while arguing its case, to confine its evidence and argument to only one of the two inconsistent pleas. The observations that inconsistent pleas cannot survive are during the course of appreciation. When a party takes inconsistent pleas, ordinarily, it may abandon/destroy one, for success in another. In a given case, two conflicting and inconsistent pleas may even destroy both the pleas, cases, grounds of attack or grounds of defence. In a given case, party may sacrifice one for the success in the alternate plea. This is a matter to be considered when the court enters the zone of appreciation of evidence and grant of relief in accordance with the case established. There is nothing either in the Civil Procedure Code or in the Evidence Act, as conceded by Shri Deshpande, Advocate that prevents a party from pleading alternate pleas, whether consistent, complimentary or inconsistent and conflicting."

14. Thus, in the present case, in wake of the defence raised by the respondent, the petitioners have been allowed to incorporate the alternate prayer. Now, to support the main prayer as well as the alternate prayer, some facts in the form of a clarification are sought to be introduced by way of the proposed amendment in paragraphs 17 (C) to 17(F). Thus, essentially it appears that the case of the petitioners appears to be precisely that they are the joint owners of the common passage and the said passage is being used by them by way of necessity. Thus, once the alternate prayer was allowed to be incorporated in the plaint, then trial Court should not have rejected the application on the ground that it will take away the defence of the respondent/defendant. An application for amendment

cannot be rejected on the ground that the proposed amendment will take away the defence of the defendant. Rather, it is the most basic principle of pleadings that all material facts should be pleaded.

15. So far as the finding of the learned trial Court that this will amount to bringing up a new case is concerned, no doubt by way of the proposed amendment, the petitioners have also tried to claim the passage as an easement of necessity; however, in my view, there is nothing wrong in pleading an alternate plea which appears to be complementary and not inconsistent. Therefore, an inconsistent plea in the alternate does not amount to withdrawal of any admission. The trial Court erroneously held that by way of the proposed amendment, the petitioners' admission would be withdrawn.

16. Even an alternate and inconsistent plea can be certainly permitted to be raised in the plaint as long as the cause of action or relief is not materially affected. In the present case, the cause of action and the relief are not being materially affected by the proposed amendment.

17. A reference also can be made to the decision of this Court in the case of *Vaishnavi Sai Shri Mahalaxmi Jagdamba Shikshan Sanstha v. Purva Vidarbha Mahila Parishad* wherein, after referring to several judgments of the Supreme Court, this Court has held that the plaintiff can raise alternate and inconsistent pleas in the plaint so long as the cause of action and relief sought in the plaint are not materially affected. Relevant observations in paragraph 39 of the judgment are reproduced as under:

"39. alternate and inconsistent pleas can certainly be permitted to be raised in a plaint, as long as the cause of action or relief were not materially affected."

18. Though, the passage in the map attached to the written statement is shown by different letters, eventually, the petitioners are claiming the right of way in respect of the passage between plot nos.1,3 and 4. The suit is filed in the apprehension of closure of the said passage. The cause of action in order to seek relief, either in respect of the passage at "EFGHE" OR "EGHIE" is one and the same. It will remain as it was originally pleaded in the plaint and will not be materially affected. Similarly, the relief will also not be materially affected. Therefore, I find substance in the argument of learned counsel for the petitioners that the learned trial Court lost sight of this legal position and erroneously rejected the application for amendment. Hence, the order of the trial Court refusing to incorporate Para 17 (C) to 17 (F) in the plaint does not stand to the scrutiny of law and therefore, is required to be set aside.

19. Accordingly, writ petition is allowed.

20. The order dated 03.05.2025 passed by Joint Civil Judge, Senior Division, Amravati in Special Civil Suit No.192/2024 below Exh.56 refusing to incorporate the proposed amendment to para 17 (C) to 17(F) in the plaint is hereby quashed and set aside. Consequently, the petitioners are permitted to carry out the

proposed amendment, which they have proposed in Para No.17 (C) to 17(F) in the application (Exh.56).

21. Rule is made absolute.

FOOTNOTES

1. **(2022) 16 SCC 1**
2. **2002 SCC OnLine Bom 516**
3. **2021 SCC OnLine Bom 1194**