



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

S.B. Civil Writ Petition No. 16719/2024

Shrilal S/o Shri Chunnilal Ji Purohit, Aged About 76 Years,
Resident Of Bagol Nohar Tehsil Nathdwara District Rajsamand
(Rajasthan), Second Address C/o Purohit Dairy, Near Brajraj
Hotel, Tehsil Road Nathdwara District Rajsamand (Rajasthan).

-----Petitioner

Versus

Smt. Bhagwati Devi W/o Shri Udailal Ji Shrimali, Resident Of
Nedach Tehsil Nathdwara District Rajsamand (Rajasthan)

-----Respondent

For Petitioner(s)	:	Mr. Rishabh Shrimali.
For Respondent(s)	:	Mr. Nikhil Ajmera.

HON'BLE MR. JUSTICE ARUN MONGA

Order (Oral)

23/05/2025

1. Petitioner (defendant) herein, inter-alia, is against an order dated 08.08.2024 passed by learned Civil Judge, Nathdwara in Civil Original Suit No.40/2016, vide which the application filed by him under Order 6 Rule 17 CPC seeking amendment of the written statement was dismissed.
2. Brief facts first. The plaintiff-respondent filed a suit seeking ejectment, arrears of rent, and possession of a property, claiming to have purchased it on 02.06.2014 from Smt. Mithu Devi, wife of Banshi Lal. He alleged that an oral tenancy existed between him and the defendant-petitioner.
 - 2.1. The defendant-petitioner contested the claim, stating he took possession of the property based on an agreement dated 24.06.1986, after paying Rs.25,000 and supplying dairy products



worth Rs.1,50,000 to the previous owner. He denied any landlord-tenant relationship and challenged the validity of the plaintiff's ownership, arguing that Smt. Mithu Devi was not authorized to sell the property.

2.2. During the suit's pendency, the defendant filed an application under Order 6 Rule 17 CPC to amend his written statement. He aimed to reaffirm the absence of a tenancy, the unrepaid security deposit, the non-joinder of Banshilal, and alleged concealment of facts by the plaintiff, claiming entitlement to special damages under Section 35A CPC.

2.3. The plaintiff opposed the amendment. The learned Civil Judge, Nathdwara, dismissed the defendant's amendment application on 08.08.2024. The defendant-petitioner subsequently filed a review petition, which remains pending till date.

3. In the aforesaid backdrop, I have heard the rival contentions learned counsel for the parties and gone through the case file alongwith the documents annexed therewith.

4. The learned counsel for petitioner argues that the trial court's rejection of the amendment was against Order 6 Rule 17 CPC, which allows amendments to pleadings to ensure just decisions. He contends that the trial court wrongly refused the amendment on the basis that similar claims had already been raised. The trial court ignored the petitioner's plea about non-joinder of necessary parties—an issue that affects the suit's maintainability. He clarified that a typographical error misnamed the party in the amendment application, which has been sought to be corrected in a pending review petition, therefore the same does not come in the way of the present petition.



5. Be that as it may, ss per the conceded case both pleaded in the application as well as argued before this Court, the stand taken by the learned counsel for the petitioner is that amendment is required only for the purposes of elaborating, which has already been stated in the written statement i.e. that the previous owner ought to have been impleaded by the plaintiff as a party and yet he has taken no steps.

6. It is settled position that the plaintiff is the master of the *lis* and it is for him to see as to whom he wants to sue or proceed against and the defendant cannot decide it on behalf of the plaintiff. The plaintiff has the discretion to choose the parties to be impleaded in a suit. The defendant cannot compel the plaintiff to include or exclude particular individuals. The issue of non-joinder raised in the amendment does not hold any weight unless the party is indispensable under Order I Rule 10 CPC. In any case, if the defendant wishes to rely on what has been already stated he is at liberty to bring the previous owner as his supporting witness, it is not mandatory on the part of the plaintiff to make him a party.

7. Moreover, even otherwise, I am of the view that such an application should have been filed at the very threshold of the suit proceedings and not when the entire trial is almost at the culmination stage and therefore, it is nothing but a delay tactic. The proposed amendment, if at all, could and should have been raised at the beginning of the suit. Order 6 Rule 17 CPC (Proviso) requires that amendments should not be allowed after the trial has commenced, unless the party demonstrates that despite due



diligence, the matter could not have been raised earlier. Herein, no such explanation has been/ was provided.

8. Furthermore, The rejection of the amendment does not prejudice the defendant, as the core contentions already exist in the written statement, and he retains all procedural options (such as cross-examination and witness production) to prove his case.

9. No grounds to interfere.

10. Dismissed.

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

(ARUN MONGA),J

256-DhananjayS/Rmathur/-

Whether fit for reporting : Yes / No