



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 12047 OF 2026

Pralhad S/o. Dnyanoba Renge
Age. 64 years, Occ. Service & Agriculture,
R/o. Ganesh Nagar, Dargah Road, Parbhani,
Taluka and District Parbhani.

...Petitioner

Versus

1. Vitthal S/o. Dnyanoba Renge (Died)
Through his Legal Representatives
- 1/1. Smt. Sushilabai W/o. Vitthalrao Renge,
Age. 65 years, Occ. Household,
R/o. At village Jamb, Tq. And Dist. Parbhani.
- 1/2. Yamuna W/o. Rajesh Kantule
Age. 35 years, Occ. Household,
R/o. At village Kumbhar Pimpalgaon,
Tq. Ghansawangi, Dist. Jalna.
2. Mohan S/o. Vithalrao Renge,
Age. 43 years, Occ. Agri.,
3. Satish S/o. Vithalrao Renge,
Age. 41 years, Occ. Agri.,
4. Dnyanoba S/o. Vithalrao Renge,
Age. 40 years, Occ. Agri.,
5. Salubai W/o. Vithalrao Renge,
(Died and deleted before the Ld. Trial Court)
6. Pushpabai W/o. Pralhad Renge,
Age. 57 years, Occ. Household,
7. Vashishta W/o. Pralhad Renge,
Age. 39 years, Occ. Service/Agri.,

8. Pravin S/o. Pralhad Renge,
Age. 36 years, Occ. Service/Agri.,
 9. Mahesh S/o. Pralhad Renge,
Age. 34 years, Occ. Service/Agri.,
 10. Sou. Saraswati @ Sarubai W/o. Dattarao Samale,
Age. Major, Occ. Household,
R/o. Takli (Kumbhkarn), Tq. & Dist. Parbhani,
 11. Suman @ Rukminibai W/o. Sheshrao Kadam
Age. Major, Occ. Household,
R/o. Kadam Galli, Purna,
Tq. Purna, Dist. Parbhani.
 12. Sou. Ratanbai @ Ratnamala W/o. Shivaji Solanke
Age. Major, Occ. Household,
R/o. Sadola, Tq. Majalgaon, Dist. Beed.
 13. Kamal W/o. Nayab Sarate
Age. Major, Occ. Household,
R/o. Wazur (Ranjni Station),
Tq. Partur, Dist. Jalna.
- ...Respondents.

...

Advocate for Petitioner : Mr. S.K. Chavan

Advocate for Respondent No. 3 : Mr. M.M. Patil (Beedkar)

...

CORAM : MANJUSHA DESHPANDE, J.

DATE : 29th SEPTEMBER, 2026

JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with the consent of the parties.
2. Heard learned Advocate Mr. S.K. Chavan, for the petitioner and learned Advocate Mr. M.M. Patil (Beedkar), for Respondent No. 3.

3. The petitioner is assailing the order below Exhibit 292 dated 30th July 2026 passed by the Joint Civil Judge, Senior Division, Parbhani, allowing the application filed by the respondents under Order 6 Rule 17 of the Code of Civil Procedure, seeking to add Plot No. 34 into the title clause and prayer clause. The application for amendment has been allowed by the learned Civil Judge, Senior Division, Parbhani, after the trial has commenced, without there being any explanation by the respondents for the delay in making the application for amendment in the plaint. The petitioner submits that the petitioner is the original Defendant No. 1 in R.C.S. No. 252 of 2007 filed by Respondent Nos. 1 to 5, who are the original plaintiffs, seeking partition and separate possession of half share against the petitioner and Respondent Nos. 6 and 7 in respect of 10 agricultural lands and two house properties which are outlined in the plaint, claiming it to be joint family properties. The written statement was filed denying the status of joint family property, contending that oral partition had already taken place in the year 1984. The defence was also raised on the ground that the plaintiff has suppressed certain properties purchased by him in different names.

4. Learned Advocate Mr. S.K. Chavan, submits that in the plaint there is an averment that, the respondents had purchased a plot at

Ganesh Nagar, Parbhani, which is a joint family property on which he has constructed a bungalow. The status of that property is also claimed as joint family property, but in spite of making averments about joint family property, he has not sought relief against that property and it is not included in the suit. However, the respondents had reserved their rights to add the said property in the suit once they receive the information about the said property.

5. He submits that in the written statement filed by the petitioner, in response to the said averment, it is denied by the present petitioner that, it was a joint family property and claimed that he has purchased it from his own income. He submits that the written statement was filed on 9th April 2008. After that, the petitioner has produced the certified copy of the sale deed of Plot No. 34, Dargah Road, Parbhani, along with the list of documents at Exhibit 68, on record. He further submits that the document was already part of the record in the year 2010 itself, thus, the respondents could have carried out the necessary amendment in the year 2010. However, the respondents have not filed any application seeking amendment at that time.

6. In fact, the respondents have filed their evidence close pursis on 29th June 2010. He submits that after 2010, for a prolonged period, the

respondents have not taken any steps to file any application. It is submitted that the respondents have amended the suit twice in the year 2017 and in the year 2022, respectively, as such the respondents could have filed the application for amendment on both the occasions, which they have failed.

7. The respondents have failed to show due diligence for the delay in making the application for amendment. It is submitted that no explanation has been given for the delay of 16 years in making the application by the respondents. It is settled that when an application is filed under Order 6 Rule 17 of the C.P.C., post trial amendment cannot be allowed unless the Court records a positive finding that despite due diligence the party could not have raised the matter before commencement of trial. The learned Judge of the trial court has failed to record a specific finding about reasons for failure to observe due diligence by the respondents. The delay of 16 years is not appropriately explained. Therefore, the impugned order becomes unsustainable. In case of ***Pandit Malhari Mahale Versus Monika Vikram Joshi, (2020) 11 SCC 549 and Vidyabai and Others Versus Padmalatha and Another, (2009) 2 SCC 409***, it is held that in absence of a finding of due diligence, the Court lacks jurisdiction to allow post-trial amendments. The trial court has

erred in relying on the decision in case of ***Rajbahadur Jiyaram Yadav Versus Prakash @ Pappu Jiyaram yadav and Others, 2016 (2) Mh.L.J. 639***, to allow the application for amendment of plaint.

8. According to the learned Advocate, generic observations regarding liberal approach for suits cannot override the mandate of Order VI Rule 17. He submits that there is no explanation given by the respondent for failure to make such an application seeking amendment, in spite of the fact that the document on the basis of which he is seeking amendment was already placed on record by him in the year 2010 itself. It is submitted that by allowing such amendment after 19 years would cause grave prejudice to the petitioner by reopening the trial, requiring framing of fresh issues and leading evidence. By making amendment in the plaint, the plaintiff is trying to fill up the lacuna / overcome the admissions given in the cross-examination which was concluded by filing evidence close pursis on 29th June, 2010, itself. He submits that the order passed by the Civil Judge, Senior Division, Parbhani, is in total breach of the conditions mentioned in Order 6 Rule 17 of the Code of Civil Procedure. He has relied on the judgments in case of ***Vidyabai and Others*** (supra) and ***J. Samuel and others Versus Gattu Mahesh and Others, (2012) 2 SCC 300***, which clearly hold that if a party fails to satisfy the Court

about due diligence, amendment post commencement of trial is barred. Reliance is placed on the decision in case of ***Chitra and Another and C. Natarajan, 2026 INSC 781***, wherein the Hon'ble Supreme Court has held that carelessness and negligence of the party cannot be tolerated under the garb of liberal approach. Due diligence under the proviso relating to amendments, even if crucial, cannot be allowed. In view of the settled legal position which can be reflected from the judicial pronouncements of the Hon'ble Supreme Court, it is imperative that the amendment application post trial can be allowed, only in exceptional circumstances, when the applicant proves that in spite of due diligence it was beyond his control to act promptly by making necessary amendment.

9. Per contra, learned Advocate Mr. M.M. Patil (Beedkar), appearing for Respondent No. 3, has opposed the admission of the writ petition, contending that the respondents are mainly seeking to incorporate the details of the house property, that is Plot No. 34 out of Survey No. 581/2A and 2B situated at Dargah Road, Parbhani, in the title clause and prayer clause of the suit. He would submit that the respondents are not introducing an altogether new case by way of amendment, but are only seeking permission to give the details of the property which is already mentioned in the plaint at Paragraph No. 4. The

property is already described, and in the plaint itself it is stated that they are reserving their right to add the property in the suit, upon receiving the necessary details. He submits that although the petitioner had filed the details of the document in his written statement and the certified copy of the document itself in the year 2010, he could not make the necessary amendment due to pendency of the two writ petitions filed by the petitioner, that is Writ Petition No. 10739 of 2012 and Writ Petition No. 10670 of 2017 in this Court. It is only after the judgment and order has been passed in Writ Petition No. 10670 of 2017 on 21st October 2022 and the suit was listed before the trial court, the respondents submitted an application at Exhibit 292 seeking addition of Plot No. 34 out of Survey No. 581/2A and 2B situated at Dargah Road, Parbhani, to be included in the title as well as in the prayer of the suit. He submits that at the time of filing of the suit he could not collect the documentary evidence of the property. The petitioner has exhibited Plot No. 34 at Exhibit 77 and it is only expected by the Court that the cause of action to move an application for adding the suit property accrued only after exhibiting the said document. The suit has been filed for partition and separate possession of the joint family properties, therefore all the properties that form part of the joint family property are required to be included in the suit for partition. Only after including the property in the suit, it would be

decided by leading evidence whether or not it forms part of the joint family property. Thus, by including this property in the suit, the nature of the suit is not going to change in any manner. Therefore, no prejudice is going to be caused to the other side.

10. He submits that after passing of the impugned order, the suit has proceeded. The petitioner has also filed an additional written statement. It is submitted that the petitioner is unnecessarily prolonging the suit and protracting the litigation. In fact, this Court while passing order dated 28.04.2016, in Writ Petition No. 10739 of 2012, itself had expedited the trial of the suit with a direction to dispose it within a period of 8 months. Even in Writ Petition No. 10670 of 2017, this Court vide order dated 21st January 2022 has also issued directions to decide the suit within a period of 4 months from the date of order. Irrespective of the various orders passed by this Court, the suit is being prolonged by the petitioner on one or the other count. He has placed reliance on the decision of the Hon'ble Supreme Court in case of ***Dinesh Goyal @ Pappu Vs. Suman Agarwal (Bindal) and others***, decided by order dated 24th September 2024. The Hon'ble Supreme Court, relying on the previous decisions of the Hon'ble Supreme Court itself, has carved out certain principles which are guiding factors while deciding amendment of

pleadings. According to the learned Advocate for the respondents, his case would clearly fit in the guiding principles stated in paragraph No. 11.2 of the said decision :

“11.2 Over the years, through numerous judicial precedents certain factors have been outlined for the application of Order VI Rule 17. Recently, this Court in [Life Insurance Corporation of India v. Sanjeev Builders Pvt. Ltd. & Anr.](#)⁷, after considering numerous precedents in regard to the amendment of pleadings, culled out certain principles:-

(i) 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 VI Rule 17 of the CPC](#).

(ii) In the following scenario such applications should be ordinarily allowed if the amendment is for effective and proper adjudication of the controversy between the parties to avoid multiplicity of proceedings, provided it does not result in injustice to the other side.

(iii) Amendments, while generally should be allowed, the same should be disallowed if -

(a) By the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side.

(b) The amendment does not raise a time-barred claim, resulting in the divesting of the other side of a valuable accrued right (in certain situations)

(c) The amendment completely changes the nature of the suit;

(d) The prayer for amendment is malafide,

(e) By the amendment, the other side should not lose a valid defence.

(iv) Some general principles to be kept in mind are –

(I) The court should avoid a hyper-technical approach; ordinarily be liberal, especially when the opposite party can be compensated by costs.

(II) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint or introduce an additional or a new approach.

(III) The amendment should not change the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint.”

11. It is his prayer that in view of the decision of the Hon'ble Supreme Court which holds that amendment of pleadings are to be allowed which are necessary for determining the real questions in controversy, provided it does not cause injustice or prejudice to the other

side, his application is to be allowed for effective adjudication of controversy between the parties to avoid multiplicity of proceedings. He submits that in view of the settled legal position, the impugned order does not deserve any interference and the petition deserves to be dismissed.

12. After hearing the respective parties and going through the documents, the subject matter of petition falls within the narrow compass of Order VI Rule 17 of the C.P.C, the same is reproduced below for convenience which read thus :

“17. 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.”

13. The few admitted facts which are not disputed by either of the parties are that: Suit is filed on 9th October 2007 by Respondent Nos. 1 to 5 for partition and separate possession. In the plaint it is averred that there is a property at Ganesh Nagar, Parbhani, which is the joint family property with a bungalow constructed thereon, of which necessary information and details are not available with the plaintiffs, who seek relief to add the details of the property in suit if the same would become available to them. The written statement is filed by the defendant on 9th April 2008, denying the claim of the plaintiffs that the property at Ganesh Nagar was joint family property. The certified copy of the sale deed of the said property was placed on record in the year 2010, evidence close pursis is filed on 29th June 2010. Twice, in the year 2017 as well as 2022, the plaint has been amended. The application seeking amendment for the plaint has been filed by the respondent at Exhibit 292 on 23rd July 2026 with a prayer that they may be permitted to add property that is Plot No. 34 out of Survey No. 581/2A-2B situated at Dargah Road, Parbhani, in the prayer clause and title clause. The application was opposed by filing say by the petitioner herein. The same was filed on 27th July 2026 and the Order below Exhibit 292 was passed on 30th July 2026.

14. From the aforementioned undisputed dates and facts, it is

evident that there is a huge gap between the amendment made by the respondents in the year 2017 and the application filed by them in the year 2026. So far as Order 6 Rule 17 of the C.P.C. is concerned, it is divided into two parts. The Court is allowed to amend the pleadings at any stage and in any manner on such terms and conditions as may be just, in case such that are amendment is necessary for the purpose of determining the real questions in controversy between the parties. Thus the first part of the provision for amendment of pleadings, clearly provides that amendment can be allowed by the Court at any stage of the proceeding to either of the parties for determining the real issue or controversy between the parties. The proviso limits the powers of the Court to allow such application after the trial has commenced. Application for amendment after commencement of trial requires the applicant to satisfy the Court that, in spite of due diligence the party could not raise the issue before the commencement of trial. In case of ***Vidyabai and others*** (supra), the question as to what would amount to commencement of trial has been clarified by the Hon'ble Supreme Court by holding that, the trial is deemed to commence when the issues are framed and the case is set for recording of evidence. Undisputedly in the present case the trial has commenced and even the evidence of plaintiff, (present respondents) is complete and evidence close pursis has also been filed. Therefore, it was

imperative for them to demonstrate that in spite of due diligence the applicant could not file the application, seeking amendment to the plaint. Upon going through the application at Exhibit 292, the only grounds mentioned by the applicant are that, although their evidence is complete and the Court has exhibited the 'sale deed', which is a public document, therefore cause of action to file application has arisen only after exhibiting the 'sale deed'. It is also stated that in the written statement the defendant had denied that it is a joint family property, and addition of said property to the suit would not cause any prejudice to the present petitioner, since the property was already mentioned in the plaint, it would not give rise to new cause of action and it would not change the nature of suit, as such would cause no prejudice to the petitioner. Although it is not pleaded in the application, but the learned Advocate for the respondents during the course of arguments submitted that the application for amendment could not be filed previously due to the stay that was operating to the suit from the year 2012 to the year 2016. Writ Petition No. 10739 of 2012 pending before this Court was decided vide order dated 28th April 2016, during which the suit remained stayed for a period of 4 years. And Writ Petition No. 10670 of 2017 which is decided along with Writ Petition No. 1322 of 2017, the stay was operating till the aforesaid petitions were decided on 21st January 2026. Therefore,

according to the respondent, from the year 2012 to 2026, barring period of few months between 2016 and 2017, there was a stay to the Regular Civil Suit No. 252 of 2007, during which it was not possible for the respondents herein to file the application seeking amendment. This position is not disputed by the learned Advocate for the petitioner. On the aforesaid background, I am constrained to fall back on the decision of the Hon'ble Supreme Court in ***Dinesh Goyal @ Pappu*** (supra), wherein the Hon'ble Supreme Court has taken into consideration all the landmark decisions governing Order 6 Rule 17 of the C.P.C. after the amendment to the section in the year 2002. The Hon'ble Supreme Court has held that it is a settled rule that the Court should adopt a liberal approach in granting amendment of pleadings, but it cannot be in contravention of the statutory boundaries placed on such power. Referring to another decision in case of ***North Eastern Railway Administration, Gorakhpur Versus Bhagwan Das, (2008) 8 SCC 511***, the Hon'ble Supreme Court has observed that the amendments are to be allowed, when it satisfies two conditions: No. 1 of not causing injustice to the other side, and No. 2 of being necessary for determining the real question in controversy between the parties. Applying the aforesaid two conditions to the present case, in my view, by adding the details of the property, which already forms part of the averments made in the plaint, would not in any way cause any

prejudice to the petitioner, since the petitioner would always have the liberty to cross-examine the witnesses on the amended issue. Similarly, it is also important to include the details of the suit property in the suit for the reason that this suit being for partition of the properties that are claimed to be joint family properties, are required to be brought into a common hotch-pot of Respondent no. 2. Whether it is joint family property or self-acquired property would be a matter of evidence led by the parties. Thus, by incorporating details of a property, which is already mentioned in the plaint, it is not going to cause any prejudice to the petitioner.

15. Reliance can also be placed on the judgment in case of ***Life Insurance Corporation of India Versus Sanjeev Builders Pvt. Ltd and Another***, 2022 SCC OnLine SC 1128, where the Hon'ble Supreme Court has reiterated that the Courts should avoid hyper-technical approach and should ordinarily allow amendments, that can be compensated by costs, if such amendment does not introduce a new ground or new approach and such amendment does not change the nature and cause of action of the suit.

16. Applying these principles to the present case, I do not find that any prejudice would be caused to the petitioner on account of

allowing the amendment only to the extent of incorporating the details of the sale deed i.e. already referred to in the plaint. In fact, if the amendment is not allowed, the respondent will be permanently precluded from claiming partition of the said property in view of the bar under Order II Rule 2 of the CPC. Therefore, it is necessary to bring all the properties into the common hotch-pot, and if such property which is claimed to be a joint family property is brought into hotch-pot, it would not change the nature of suit. So far as due diligence is concerned, the learned Advocate for respondent no. 3, has already submitted that, there was a stay operating during the major part of the intervening period which was vacated only in the year 2026, which forms part of record, hence requirement of due diligence will not apply to the facts of the present case.

17. Thus, in my opinion, the delay occurred in filing the application for amendment stands substantiated from the record itself. In the result, the writ petition is dismissed and Rule is discharged.

(MANJUSHA DESHPANDE, J.)