

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10584 OF 2026

Sunita Dilip Pawale

...Petitioner

Versus

Eknath Kondiba Darwatkar (Since
Deceased) Through LRs.

...Respondents

Mr. Sudhir Sadavarte, a/w Pritam Nigade, for the Petitioner.

SANTOSH
SUBHASH
KULKARNI

Digitally signed by
SANTOSH SUBHASH
KULKARNI
Date: 2026.08.27
14:45:59 +0530

CORAM: N. J. JAMADAR, J.

DATED: 25th AUGUST, 2026

Oral Order:-

1. Heard the learned Counsel for the petitioner.
2. The challenge in this petition is to an order dated 6th July, 2026, whereby the learned Judge, Small Causes Court, has rejected an application for amendment in the plaint.
3. The learned Civil Judge was of the view that the interdict contained in the proviso to Order VI Rule 17 of the Code of Civil Procedure, 1908 came into play, as the evidence of the plaintiff was closed and despite an order dated 5th March, 2024, whereby Alka Darwatkar was summoned as a witness No.2 by defendant Nos.2 to 4, the plaintiff had not sought the amendment in the plaint.

4. The Sale Deed in respect of which the declaration was sought by the plaintiff that it was not been binding upon the plaintiff seems to have been executed on 30th July, 2009. Having sought declaration in respect of the said Sale Deed to which Alka Darwatkar is shown as the consenting party, there was no plausible reason for not raising the matter before commencement of the trial.

5. In any event, the proposed amendment would alter the character of the suit, which has been instituted for partition and separate possession of the suit property. If the proposed amendment is allowed, the dispute as to the legality and validity of the purported marriage of Alka Darwatkar with the deceased father of the plaintiff would become a fact in issue. Evidently, till date Alka Darwatkar has not instituted any proceeding asserting her right over the suit property in the purported capacity of the wife of the deceased father of the plaintiff.

6. In these circumstances, the learned Civil Judge was justified in declining to grant permission to amend the plaint as the interdict contained in the proviso to Order VI Rule 17 of the Code came into play and there was lack of due diligence, and

the proposed amendment would change the nature and the character of the suit.

7. The petition, thus, stands dismissed.

[N. J. JAMADAR, J.]