

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

WRIT PETITION NO. 8178 OF 2013

Balaji s/o Narayan Lachane,
Age: 38 years, Occu. : Agriculture,
R/o Kavatha, Tq. Kandhar,
Dist. Nanded.

...Petitioner

versus

Deorao s/o Ramji Lachane,
Age: 69 years, Occu.: Agril.,
R/o Kavatha, Tq. Kandhar,
At present residing at Shrsi (Bk.),
Tq. Kandhar, Dist. Nanded.

...Respondent

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Mr. M. V. Ghatge, Advocate h/f Mr. B. N. Gadegaonkar, Advocate for
petitioner.
Mr. M. P. Tripathi, Advocate h/f Mr. N. S. Kadam, Advocate for
respondent.

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CORAM : N.W. SAMBRE, J.

DATE : 25TH FEBRUARY, 2015

ORAL ORDER :

. An order passed below Exhibit-49 for amendment of
written statement in Regular Civil Suit No. 60 of 2004 passed by Joint
Civil Judge, Senior Division, Kandhar on 16/03/2012, is subject
matter of the present petition.

2. The respondent-plaintiff initiated Regular Civil Suit No 60
of 2004 for declaration of ownership and possession of the suit
property.

3. The trial in the suit has commenced and has reached at the stage of cross examination of the plaintiff. At such stage, the document, which according to the defendant, is very crucial, was sought to be placed on record by carrying out amendment in the written statement and as such, moved an application Exhibit-49, which is rejected by the order impugned. As such, present writ petition.

4. Mr. Ghatge, learned Counsel for the petitioner-defendant submits that having regard to the relationship of the parties to the suit i.e. petitioner being nephew of the defendant, earlier there exist transaction of exchange in between the father of defendant and plaintiff and the document to that effect was executed. He further urged that such document was not produced at the time of filing of written statement in 2005, as he was minor at the time of execution of such document and it was not within his knowledge. He further submits that having taken search of such document, upon receipt of the knowledge from his relatives, same was discovered just prior to filing of the application Exhibit-49 and as such, same has prompted to move the application for amendment. He further urged that the said amendment is crucial one for deciding the issue raised in the suit. He further submits that even if the trial in the suit has

commenced and the suit is of 2004, the plaintiff can be compensated by awarding appropriate costs and by expediting the suit. He submits that the trial Court has rejected the application for amendment only on the ground that the trial in the suit has commenced and the application for amendment is filed at belated stage. He further urged that an appropriate opportunity, as a consequence of allowing the amendment, would be given to the plaintiff-respondent.

5. Mr. Tripathi, learned Counsel for the respondent-plaintiff has strenuously urged that the discretion exercised by the trial Court in rejecting the application is just and proper. He has invited my attention to the certain events, such as filing of suit on 17/06/2004, filing of written statement on 09/02/2005, framing of issues on 03/08/2005 and beginning of the evidence by plaintiff vide Exhibit-37 on 07/08/2012. He further urged that as the trial in the suit has gained considerable progress, the learned trial Court has rightly exercised the discretion in rejecting the application. He submits that the defendant should have been diligent in exercising his right and has sought to place reliance upon the judgment of the Apex Court in the matter of **Vidyabai & ors. Vs. Padmalatha & Anr.** reported in **2009 AIR(SC) 1433** so as to support his contentions raised above. He submits that, by grant of amendment, the nature of defence raised will be entirely changed.

6. Having regard to the rival contentions of the parties, it is noticed that, the cause for rejection of the amendment is, filing of the same at belated stage. No doubt, the suit is filed in 2004 and age of the plaintiff, as on today is around 72, however, one cannot loose sight of the fact that, the plaintiff has filed his examination-in-chief in 2012. After issues were framed in August 2005, the respondent-plaintiff has yet to enter in the witness-box for cross-examination.

7. If we look into the nature of the amendment, that is sought to be incorporated, prima facie, after reading of the said application, this Court is satisfied that, the document sought to be placed on record is most relevant, one which is necessary to be brought on record for adjudicating the issue involved, as the said document goes to the root of the matter.

8. The proposition of law cited by learned Counsel for the respondent-plaintiff, in the facts of the said case, though cannot be disputed, however, in the present case, it is required to be noted that, the trial has not progressed to advance stage. In my opinion, if amendment sought to be moved by the defendant to the written statement is granted, no prejudice will be caused to the plaintiff as the plaintiff can be given an appropriate opportunity to meet such

document before the trial Court.

9. It is also required to be taken note of the fact that, as the suit is pending since 2004 and having regard to the age of the plaintiff, i. e. 72 years, hearing of the suit also can be expedited.

10. In this background, in my opinion, it is just and proper, where this Court can exercise discretion by allowing amendment as is sought by Exhibit-49, which, in my opinion, is necessary in the interest of justice. As such, the impugned order dated 16/03/2012 passed below Exhibit-49 in Regular Civil Suit No. 60 of 2014 by Joint Civil Judge, Senior Division, Kandhar is hereby set aside. The application Exhibit-49 stands granted. The defendant shall carry out appropriate amendments within period of two weeks from today. The defendant shall pay cost of Rs. 10,000/- (Rs. Ten Thousand) to the plaintiff within a period of two weeks from today in the trial Court. Deposit of cost is a condition precedent and the plaintiff is at liberty to withdraw the same.

11. Having regard to the fact that, the suit is pending since 2004 and the plaintiff is at advanced age i. e. 72 and as is rightly agreed by the parties before this Court, hearing of the suit is expedited. Learned trial Court is directed to decide the suit within a

period of six months from carrying out of amendment. Learned trial Court is directed to give appropriate opportunity to the plaintiff to meet the amendment granted by this Court.

12. The writ petition stands allowed in above terms.

[N.W. SAMBRE, J.]