

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

WRIT PETITION NO.11589 OF 2014

1. Govardhan s/o Ganpat Chormale,
Age 52 years, Occu. Agri.,
2. Natha s/o Laxuman Jodnar,
Age 72 years, Occu. Agri.,

Both r/o Reoki, Taluka Georai,
District Beed

.. Petitioners
(Original Defendants)

Versus

1. Babasaheb s/o Ganpat Chormale,
Age 58 years, Occu. Agri.,
R/o Reoki, Taluka Georai,
District Beed
2. Satish s/o Govardhan Chormale,
Age 27 years, Occu. Agri.,
R/o Reoki, Taluka Georai,
District Beed
3. Ashok s/o Padmakar Waghmode,
Age 25 years, Occu. Agri.,
R/o Doiphodwadi, Taluka Georai,
District Beed
4. Prakash s/o Dnyanoba Soundalkar,
Age 33 years, Occu. Agri.,
R/o Reoki, Taluka Georai,
District Beed

.. Respondents
(Respondent No.1 is
Orig. Plaintiff and
others are added
defendants)

...

Mr V.P. Savant, Advocate for petitioners
Mr D.G. Nagode, Advocate for respondent No.1

CORAM : N.W. SAMBRE, J.

DATE : 8th December 2015

PER COURT

Heard.

2. An application Exhibit 104 in Regular Civil Suit No.196 of 1994, for specific performance was moved by the plaintiff - respondent No.1 herein for amendment of plaint which came to be granted by learned Civil Judge, Junior Division, Georai by order dated 1st July 2014, as such present petition by the original defendants.

3. Learned Counsel for the petitioners - defendants would urge that once the similar relief was already rejected vide order dated 3rd January 2014 passed below Exhibit 91, it was not open for the respondent - plaintiff to move application with the same prayer. Learned trial Court, while dealing with the said issue has committed error of law by not considering the principle of *res judicata* as is applicable to the present case.

4. Learned Counsel for the respondent No.1, while relying upon the judgment of this Court in the matter of **Poro Kusta Nevekar Vs. Calu Bhisso Velip**, reported in **LAWS (BOM)-2006-4-92** would urge that the subsequent applications for amendment of plaint are very much tenable. According to him, there is no merit in the petition and sought dismissal of the petition.

5. Having considered rival submissions, it is not in dispute that based on the provisions of Section 52 of Transfer of Property Act, earlier application for amendment of plaint Exhibit 91 was already rejected, wherein the similar set of facts are sought to be amended in the plaint for specific performance. The only change in circumstances as is pleaded for moving the second application which covers the amendment which was rejected while deciding Exhibit 91, is the addition of third defendant who has purchased the property during pendency of the suit.

6. In my opinion, the application Exhibit 104 would be held maintainable only to the extent of amendment in relation to defendant No.5 and not defendants No.3 and 4, which request was already refused while deciding application Exhibit 91.

7. As such, the petition is partly allowed. The application Exhibit 104 is allowed to the extent of seeking amendment in relation to defendant No.5 who is last purchaser of the suit property, as is sought to be impleaded, however, application stands rejected in relation to defendants No.3 and 4 and the plaintiff.

8. Writ Petition is partly allowed in above terms.

9. Learned Counsel for the petitioner is at liberty to withdraw the amount of Rs.10,000/- deposited in this Court.

(N.W. SAMBRE, J.)