

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

**Writ Petition No. 10505 of 2015**

**District : Ahmednagar**

1. Shri Sayaji s/o. Bhimaji Gore,  
Age : 52 years,  
Occupation : Agriculture.
2. Lahanu s/o. Shankar Gore,  
Age : 70 years,  
Occupation : Agriculture.

Both R/o. Manegaon,  
Taluka Kopargaon,  
District Ahmednagar.

.. Petitioners  
(Original plaintiffs)

**versus**

1. Kacharu s/o. Ganpat Gore,  
Age : 45 years,  
Occupation : Agriculture.
2. Shantaram s/o. Ganpat Gore,  
Age : 37 years,  
Occupation : Agriculture.
3. Vijay s/o. Ganpat Gore,  
Age : 31 years,  
Occupation : Agriculture.
4. Somnath s/o. Ganpat Gore,  
Age : 27 years,  
Occupation : Agriculture.
5. Suman s/o. Dagdu Kapkar,  
Age : 70 years,  
Occupation : Nil.
6. Jankibai w/o. Ganpat Gore,  
Age : 65 years,  
Occupation : Agriculture.
7. Baban s/o. Vitthal Gore,  
Age : 58 years,  
Occupation : Agriculture.

8. Raju s/o. Vitthal Gore,  
Age : 52 years,  
Occupation : Agriculture.
9. Sanjay s/o. Vitthal Gore,  
Age : 49 years,  
Occupation : Agriculture.
10. Digambar s/o. Vitthal Gore,  
Age : 47 years,  
Occupation : Agriculture.

Respondents no.01 to 10  
R/o. Manegaon,  
Taluka Kopargaon,  
District Ahmednagar.

11. Vimalbai w/o. Govind Lahange,  
Age : 54 years,  
Occupation : Household,  
R/o. Shitlamatanagar,  
Malegaon Camp,  
Post Malegaon,  
District Nashik.

12. Amol s/o. Chagan Gore,  
Age : 29 years,  
Occupation : Agriculture,  
R/o. Manegaon,  
Post : Ranjangaon Deshmukh,  
Taluka Kopargaon,  
District Ahmednagar.

.. Respondents  
(Original defendants)

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*Mr. S.B. Kadu, Advocate, for petitioners.*

*Mr. P.B. Shirsath, Advocate, for respondents no.01 to 10.*

*Respondent no.11 served (Absent).*

*Ms. Sandhya Patil, Advocate, for respondent no.12 (Absent).*

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**CORAM : SUNIL P. DESHMUKH, J.**

**DATE : 05TH JULY 2017**

**ORAL JUDGMENT :**

01. Rule. Rule made returnable forthwith. Heard learned Counsel for the parties by consent finally.

02. Petitioners - original plaintiffs are before this Court, aggrieved by order dated 07-07-2015, passed by 2nd Joint Civil Judge (J.D.), Kopargaon, District Ahmednagar, rejecting application - Exhibit 110 filed by petitioners for amendment of plaint in Regular Civil Suit No. 187 of 2009.

03. Learned Counsel for petitioners contends that 1/4th share of the petitioners had not been showing partition on record and despite separation by metes and bounds had taken place in 1974 upon partition between deceased father of plaintiffs and father of defendants. The petitioners have 1/4th share in the suit land, however, their names had not entered revenue record and, therefore, plaintiffs have been facing difficulties. While they realized that respondents no.01 and 06 had filed Regular Civil Suit No. 115 of 2009, also comprising their aforesaid partitioned property, without arraigning petitioners - plaintiffs as parties and compromised the same affecting their rights, they were constrained to file aforesaid suit for partition and separate possession. Respondents appeared in the suit and filed their written statement. Around 2014, while evidence was being led, petitioners had referred to a decree in Regular Civil Suit No. 217 of 1983 which had been filed by respondents no.07 to 10 in respect of the suit property. In said suit, one of the petitioners had been shown to be a party, yet the suit came to be compromised between plaintiffs therein and defendants no.01 to 04 and not with petitioner who had been defendant no.07. He had not been aware of that nor was signatory to the settlement. He had just been recently been made aware of said suit and thus reference to the said suit and the decree thereunder had been made.

A declaration in respect of the same is necessary in order to assert, establish, prove and claim right in respect of ancestral property referred to in that suit which otherwise might affect his share in the ancestral property. It is, thus, an application came to be moved at Exhibit 100 for incorporation of the averments in respect of the same and also relief in its respect.

04. Learned Counsel for respondents no.01 to 10 submits that the application has been devoid of any substance, it was moved belatedly and in the interregnum, rights have been accrued to respondents. Petitioners had been aware of 1983 suit, as can be gathered from the deposition of petitioners and their responses to the questions in the cross examination. In the circumstances, there has been no explanation at all as to why petitioners had filed the application belatedly, either in the application or any reason is given in the deposition or in answers to the cross. He, therefore, contends that the application has been rightly rejected. He contends that the law of amendments may ask to take a liberal approach but there has to be reasonable excuse for belated approach. The courts have considered that the amendment belatedly would not be granted if there is no explanation. For said purpose, learned Counsel relies on a judgment of the Supreme Court in the case of *Shiv Gopal Sah @ Shiv Gopal Sahu Vs. Sita Ram Saraugi & others* [AIR 2007 SC 1478] and particularly paragraphs 11 and 12 thereof which read as under :-

*"11. We have gone through the amendment application carefully where we do not find any explanation whatsoever for this towering delay. We would expect some explanation, at least regarding the delay since the delay was very substantial. The whole amendment application, when carefully scanned, does not show any explanation whatsoever. This negligent complacency on the part of the plaintiffs would not permit them*

*to amend the plaint, more particularly when the claim has apparently, become barred by time.*

12. *It is quite true that this Court in a number of decisions, has allowed by way of an amendment even the claims which were barred by time. However, for that there had to be a valid basis made out in the application and first of all there had to be bona fides on the part of the plaintiffs and a reasonable explanation for the delay. It is also true that the amendments can be introduced at any stage of the suit, however, when by that amendment an apparently time barred claim is being introduced for the first time, there would have to be some explanation and secondly, the plaintiff would have to show his bona fides, particularly because such claims by way of an amendment would have the effect of defeating the rights created in the defendant by lapse of time. When we see the present facts, it is clear that no such attempt is made by the plaintiffs anywhere more particularly in the amendment application. "*

05. Learned Counsel for respondents no.01 to 10 further contends that petitioners have to show their *bonafides* since such amendments may have effect of defeating rights created in defendants. The application does not contain even a whisper in explanation as to why the approach is being made belatedly while petitioners have knowledge of the decree of 1983. He submits that the trial court has rightly appreciated the same and has rejected the application which does not deserve interference with.

06. In reply, learned counsel for petitioners refers to a judgment of Hon'ble single judge of this Court in the case of *Dela Gurudal Vanjari Vs. Uddhal Govardhan Rathod* [2012(3) Bom.C.R.103] and places emphasis on paragraphs no.14, 15 and 16 thereof, which read

as under :

*"14. In the instant matter, considering the facts and circumstances of the case, I am of the view that the amendment needs to be permitted to avoid multiplicity of the litigation. The plaintiff is an agriculturist and hails from rural area and cannot be said to be conversant with procedural intricacies. It also cannot be controverted that some part of the proposed amendment relates to the events which occurred during pendency of the litigation. The trial Court was, therefore, expected to adopt liberal approach in such matters.*

*15. So far as the objection raised by the defendant for consideration of prayer put forth by way of amendment relating to cancellation of transaction dated 12.2.1999 is concerned, appropriate precaution can be taken so as to save entitlement of the respondent - original defendant to raise defence of limitation. Reference can be made to a judgment of the Apex Court in the matter of (Ragu Thilak D. John Vs. S. Rayappan and others), reported in 2001(2) S.C.C. 472, wherein the Apex Court has observed thus :*

*" The amendment sought could not be declined. The dominant purpose of allowing the amendment is to minimise the litigation. The plea is that the relief sought by way of amendment was barred by time is arguable in the circumstances of the case. The plea of limitation being disputed could be made a subject matter of the issue after allowing the amendment prayed. "*

*16. In interest of the defendant for raising the plea of limitation can be safeguarded by directing the trial Court to consider the issue of limitation that would be raised by the defendant. It is also made clear that the amendment, as proposed by the plaintiff, shall not relate back to the date of the suit and shall be deemed to have been incorporated in plaint on the date of presentation of application under Order 6, Rule 17 of the Code of Civil Procedure. "*

07. He submits that petitioners are agriculturists by occupation and do not have acquaintance with the procedure. So far as present suit is concerned, this is their maiden litigation forced upon them by respondents.

08. He further refers to a judgment of the Supreme Court in the case of *Mount Mary Enterprises Vs. Jivratna Medi Treat Pvt. Ltd.* [2015(5) Mh.L.J.214] and relies on paragraph 07 thereof in which it has been observed,

*"amendment application should be normally granted unless by virtue of the amendment nature of the suit is changed or some prejudice is caused to the defendant."*

09. He further refers to another judgment of the Supreme Court in the case of *Surender Kumar Sharma Vs. Makhan Singh* [(2009) 10 S.C.C. 626], observing,

*"Even if amendment was sought belatedly, the question that should be decided is to see whether by allowing the amendment, the real controversy between the parties may be resolved"*

*"It is well settled that under Order VI Rule 17 of the Code of Civil Procedure, wide powers and unfettered discretion have been conferred on the court to allow amendment of the pleadings to a party in such a manner and on such terms as it appears to the court just and proper. Even if, such an application for amendment of the plaint was filed belatedly, such belated amendment cannot be refused if it is found that for deciding the real controversy between the parties, it can be allowed on payment of costs."*

It has further been observed in paragraph 5 of the judgment,

*"Therefore, in our view, mere delay and laches in making the application for amendment cannot be a ground to refuse the amendment."*

10. Having heard learned Counsel for parties and looking at the nature of dispute, rights have been claimed in respect of ancestral property. While decision of the Supreme Court in the case of *Shiv Gopal Sah @ Shiv Gopal Sahu (supra)*, relied on behalf of respondents, shows that the application for amendment of plaint at a belated stage without any explanation for delay may not be allowed.

11. However, in the present case, taking overall view of the matter, it would be expedient that opportunity for a proper application giving explanation deserves to be given to the petitioners as well as an opportunity to resist the application would be available to the respondents.

12. In the result, the Petition succeeds. The order dated

07-07-2015 passed by the 2nd Joint Civil Judge (Junior Division), Kopargaon, below Exhibit 110 in Regular Civil Suit No. 187 of 2009, is quashed and set aside. The petitioners are at liberty to make proper application seeking amendment of plaint, within a period of four weeks from the date of receipt of writ of this court. If such application is made by the petitioners, respondents may file their response to the same and after hearing the parties, the application be decided by the trial court on its own merits without getting bogged down by its earlier order or for that matter, observations contained in this judgment.

13. Rule made absolute in the above terms. There shall be no order as to costs.

**( Sunil P. Deshmukh )**  
**JUDGE**

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