

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

WRIT PETITION NO. 6564 of 2015

Lotansing Pratapsing Jamadar,
age 62 years occupation agriculture
R/o Thalner Taluka Shirpur District Dhule **...Petitioner**

VERSUS

1. Chotu Hilal Choudhari,
age 52 years occupation agriculture and labour
R/o Thalner Taluka Shirpur District Dhule
2. Kavalsing Pratapsing Jamadar,
age 54 years occupation agriculture R/o as above
3. Bhaidas Deepchand Chaudhari,
age 82 years occupation Agriculture
R/o Thalner at present near Garibacha Wada-Housing
Society, Dombiwali District Thane **(Deleted)**
4. Devidas Pitambar Chaudhari,
age 64 years occupation agriculture
R/o Mahatma Gandhi Chowk, Head Post Office,
Fort, Azad Chowk Taluka Jawra District Ratlam (M.P.)
5. Kantilal Hilal Chaudhari,
age 52 years occupation business
R/o Arun Nagar, Chopada Tal. Chopada Dist. Jalgaon.
6. Suresh Hilal Chaudhari,
age 44 years occupation business
R/o 4, near Shivdham, Barak No. 1416,
Ulhasnagar, Thane
- 6/A. Sow. Uasabai Bhagwan Chaudhari,
age 38 years occupation household
R/o Bombay galli, Amalner Tal. Amalner Dist. Jalgaon.
7. Hari Hilal Chaudhari,
age 42 years occupation service
R/o Pimpri Khurd Taluka Dharangaon District Jalgaon.

...Respondents

Mr Jitendra V. Patil, Advocate, holding for Mr P.R. Katneshwarkar,
Advocate for petitioner
Mr V.A. Patil, Advocate for respondents No.1 and 5 to 7

CORAM : SUNIL P. DESHMUKH, J.

DATE : 3rd October, 2018

ORAL JUDGEMENT:

1. Rule. Rule made returnable forthwith and heard learned counsel for appearing parties finally with consent.

2. Petitioner, who is defendant No.1 in regular civil suit No. 49 of 2006 pending before Joint Civil Judge (Junior Division), Shirpur District Dhule, is before this court aggrieved by order dated 21st November 2014 on Exhibit - 69 rejecting request for amendment to written statement.

3. After hearing learned counsel for the parties, it emerges that present respondent No.1 has filed suit for possession of property as owner against present petitioner and respondents No. 2 to 7. Defendant No.1/present petitioner had denied the claim under the plaint claiming to be in possession of the property under certain transactions. While the suit has proceeded further, it appears that issues have been framed and is at the stage of evidence and in respect of same the court appears to have observed that plaintiff has yet to file his evidence, whereas counsel for the plaintiff submits that evidence

has already been submitted. It appears that since 2014 no further significant progress is made in the suit and amendment to written statement taking up an alternative plea has been sought under Exhibit – 69. The Court appears to have declined the request considering that amendment is not necessary for deciding real controversy between the parties.

4. Learned counsel Mr. Jitendra Patil holding for Mr Katneshwarkar for petitioner, submits that perusal of impugned order shows that the court has rejected application on irrelevant considerations. He submits that the law largely is settled that amendment to written statement is to be considered under wider liberal approach than amendment to plaint. He further submits that it is also well settled that defendant is at liberty to take inconsistent plea in written statement which liberty may not be available for amendment to plaint. In support of his submissions, he refers to the case of *Baldev Singh and others Vs. Manohar Singh and another*, reported in *AIR 2006 Supreme Court 2832*.

5. Learned counsel Mr. V.A. Patil appearing for plaintiff/respondent No.1 submits that in the absence of due diligence by the party concerned, amendment to pleadings may not be possible after commencement of trial. He submits that the Supreme Court has observed that although liberal principles guide exercise of discretion in allowing amendment but care

should be taken to see that injustice and prejudice of an irremediable character are not inflicted upon opposite party under amendment. In support of his submission, he refers to a case of *Chander Kanta Bansal Vs. Rajinder Singh Anand* reported in *AIR 2008 Supreme Court 2234*.

6. While considering aforesaid submissions on behalf of parties, it would have to be adverted to that submission on behalf of petitioner that courts are supposed to be liberal in exercising their power while granting amendments to plaint and further that approach in granting amendment to written statement is on a wider footing is concerned, carries a lot of substance and force, particularly, having regard to the facts and circumstances where the suit has not travelled beyond filing of affidavit of examination-in-chief of plaintiff and the matter is pending before the court since 2014.

7. In the case relied on, on behalf of the respondent No.1/plaintiff, factual aspects appear to be widely apart. Further, the court has considered that it is true that power to allow amendment should be liberally exercised. Liberal principles which guide exercise of discretion of allowing amendments are that multiplicity of proceedings should be avoided. However, care should be taken that in the process injustice and prejudice of an irremediable nature shall not be inflicted upon opposite party

under pretence of amendment. Keeping this in mind, the Supreme Court had further adverted to factual aspects whereunder in written statement filed by defendant, there has not been any whisper about prior partition agreement dated 10th September, 1982. It had further been considered that the suit had been prosecuted by a son of the defendant, who had been a Chartered Accountant, who subsequently died and the amendment to written statement had been sought while the trial had been on the verge of completion. Both the sides had closed their evidence and completed their arguments and at that stage defendant had filed an application. It had further been observed that sons of the defendant had never been prevented from bringing to the notice of the counsel about the partition. In that scenario, the court has considered that amendment at late stage would be difficult to be acceded to.

8. In the present matter, however, a plea is being sought to be raised having regard to roots in pleadings in the written statement. As such, it appears that analogy sought to be drawn on behalf of respondent No.1/plaintiff from the judgment of the Supreme Court would not apply in the present matter. In any case, in the present matter, it appears, to avoid multiplicity of the proceedings and the litigation, it would be in the interest of parties not to go with the matter with technical and pedantic

approach. Inconvenience as may be caused to the plaintiff can be taken care of by awarding costs. Considerations which have weighed with trial court appear to be away from the circumstances of the case. In the larger interest of justice, application Exhibit - 69 would be allowed.

9. As such, impugned order is set aside. Writ petition is allowed in terms of prayer clause "A" and "B" subject to payment of costs of Rs. 5000/- (Rs. Five thousand only) to the plaintiff-respondent No.1. Costs to be deposited in trial court within a period of four weeks from the date of receipt of writ of this order.

10. As the suit appears to be pending since 2006, same be expedited and disposed of, preferably within a period of nine months from the date of receipt of writ of this order.

11. Writ petition is disposed of.

**(SUNIL P. DESHMUKH)
JUDGE.**

Madkar