

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

907 WRIT PETITION NO.3652 OF 2003

Navnath S/o Vithal Dhongde,
Aged : 57 years, Occu. Agriculture,
R/o Adhala, Tq. Kallam,
District Osmanabad. ... **Petitioner.**

Versus

1. Gavalanbai w/o Madhukar Gavhane,
Aged : 52 years, Occu. Agriculture &
Household, R/o Boargaon (B),
Tq. Kaij, District Beed,
now at Adhala, Tq. Kallam,
District Osmanabad.
2. Narayan S/o Tatyaba Walse,
Aged : 54 years, Occu. Agriculture,
R/o Adhala, Tq. Kallam,
District Osmanabad. ... **Respondents.**

...
Advocate for Petitioner : Mr. S.S.Choudhari.
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CORAM : V. K. JADHAV, J.
DATE : 21.01.2020

ORAL JUDGMENT :-

1. Heard.
2. As per the information from the office, the suit bearing
Regular Civil Suit No.75 of 1991 came to be disposed off on
15.10.2003.

3. The learned counsel for the petitioner submits that by order dated 20.07.2004 while granting Rule, this Court has granted interim stay in terms of prayer clause 'C' and as such the further proceedings in Regular Civil Suit No.75 of 1991 came to be stayed. The learned counsel submits that despite the stay order, the Trial Court seems to have disposed off the suit.

4. Apart from this, the petitioner is the original defendant No.2. The respondent / plaintiff had instituted the Regular Civil Suit No.75 of 1991 for a decree of perpetual injunction and during pendency of the said suit the respondent / plaintiff had filed an application under Order 6 Rule 17 of the Civil Procedure Code for amendment of the plaint. By way of proposed amendment, the respondent / plaintiff wanted to convert the claim for specific performance of contract and alternatively for recovery of Rs.40,000/-. The petitioner / original defendant No.2 has strongly resisted the said application for amendment mainly on the ground that the learned Judge of the Trial Court by allowing the amendment application, allowed the time barred claim to be brought on

record. Even during the pendency of this Writ Petition and at the time of issuing notice to the respondents, the learned counsel appearing for the petitioner has also made submissions that if at all the amendment is to be allowed, it has to be made clear that the amendment shall operate from the date on which the application for amendment is filed and would not be permitted to relate back to the date of filing of the suit.

5. In view of the above even if the suit is pending, the amendment as proposed and allowed by the Trial Court shall operate from the date on which the application for amendment is filed and it will not relate back to the date of filing of the suit.

6. The impugned order is modified to that effect and the Writ Petition is partly allowed and accordingly disposed off.

7. Rule is made absolute in above terms.

(V. K. JADHAV, J.)

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vmk/-