

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

WRIT PETITION NO. 6325 OF 2020

1. Deorao Bajirao Thorat
(Died) Through his L.Rs.
 - 1/1. Hanumant Deorao Thorat
Age: 50 years, Occu.: Agriculture,
R/o Daudpur, Tq. Osmanabad,
Dist. Osmanabad
General Power of Holder of
Petitioners No.1/2 to 1/5
 - 1/2. Pandurange Manik Thorat
Age: 25 years, Occu.: Agri.,
R/o As above
 - 1/3. Parwatibai Pandurang Hande
Age: 60 years, Occu.: Household,
R/o As above
 - 1/4. Taramati @ Laxmibai Ganpat Dhayagude
Age: 58 years, Occu.: Household,
R/o As above
 - 1/5. Hirakanabai Nagurao Thavare
Age: 56 years, Occu.: Household,
R/o As above
 - 1/6. Wanmala Manik Thorat – Died
 - 1/7. Jijabai Devrao Thorat – Died
- ..PETITIONERS

VERSUS

1. Vikram Dagdoba Padwal
Age: 53 years, Occu.: Agri.,
R/o Upala (Makdache), Tq. Osmanabad,
Dist. Osmanabad

2. Vasantao Rangrao Ingale
(Died) Through his L.Rs.
- 2/1. Vimal Vasantao Ingale
Age: 72 years, Occu.: Household,
R/o Kangara, Tq. Osmanabad,
Dist. Osmanabad
- 2/2. Rajendra Vasantao Ingale
Age: 51 years, Occu.: Agri.,
R/o As above
- 2/3. Jayant Vasantao Ingale
Age: 49 years, Occu.: Agri.,
R/o As above
- 2/4. Sanjay Vasantao Ingale
Age: 53 years, Occu.: Agri.,
R/o As above
3. Narayanrao Abarao Shendage
Age: 55 years, Occu.: Agri.,
R/o Daudpur, Tq. Osmanabad,
Dist. Osmanabad
(The suit is already withdrawn as per
order in Exh.291)
4. Dadarao Pandurange Thorat
Age: 56 years, Occu.: Labour,
R/o As above
(The suit is already withdrawn as per
order in Exh.296)

..RESPONDENTS

....
Mr. S.G. Chapalgaonkar, Advocate for petitioners
Mr. V.D. Salunke, Advocate h/f Mr. P.K. Deshmukh, Advocate for respondent
nos. 2/1 to 2/4

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CORAM : R.G. AVACHAT, J.
DATED : 13th JANUARY, 2021

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel for the parties finally, by consent.

2. The challenge in this writ petition is to order dated 24th June, 2020 passed by 2nd Joint Civil Judge, Senior Division, Osmanabad rejecting application Exh. 273 moved for amendment of the plaint in Regular Civil Suit No. 98 of 1975 .

3. The petitioners are legal representatives of the original plaintiff. The suit has been filed for injunction simpliciter. The petitioners/plaintiffs claim possession over the properties in the suit as tenants. The trial Court had, therefore, framed issue of tenancy and referred it for adjudication by the tenancy authority. The issue of tenancy has now been finally answered negating the claim of the petitioners/plaintiffs.

4. The petitioners/plaintiffs sought for introduction of the following matter in the plaint :-

1) हे की, सदर प्रकरणात पान नं. 2 वर पैरा नं. 1 मध्ये लाईन नं. 4 मधील herewith या शब्दापुढे The defendant No.4 has admitted tenancy right and possession of plaintiff in R.C.S. No. 1/64 Devrao V/s Dadarao and C.J.S.D. Osmanabad has given permanent injunction in favour of plaintiff against defendant Dadarao – original land owner. The

Tahsildar at Osmanabad also admitted that the defendant No.3 had not in possession of the suit land and confirm the mutation entry of plaintiff in 7/12 extract in cultivation column of Sy.No. 16/3 & 16/4 which is converted into land Gat No.90. The plaintiff has long standing possession over the suit land हे टाईप होणे आवश्यक होते. परंतू टाईपरायटरच्या नजरचुकीने वरील मजकूर टाईप करण्याचे राहून गेले आहे.

According to the petitioners, the above said matter was remained to be introduced in the plaint due to typewriter's mistake.

5. The contesting respondents resisted the application on the ground of long delay. According to them, the proposed amendment could have been made earlier. The hearing in the suit as now commenced. With a view to protract hearing of the suit, the application for amendment of the plaint has been moved. Since the issue of tenancy has attained finality, the proposed amendment could not be allowed.

6. The trial Court rejected the application observing that there is delay of little over forty five years in moving the application for amendment of the plaint. The contention of the petitioners that it was the mistake of typewriter, could not be digested. The proposed amendment is not at all necessary when the petitioners' claim of tenancy has now attained finality. If the application is allowed, it will amount to reopening of issue of tenancy. Recording of evidence has now commenced.

7. The reasons given by the trial Court for rejecting the application have been reiterated by the learned counsel representing the contesting respondents herein. He would further submit that after rejection of the application for amendment, another application with same contentions and prayers has been moved before the trial Court. It is nothing but an abuse of process of Court. According to learned counsel, the decree and the documents wherein the landlord (Defendant No.4) has allegedly admitted petitioners' possession are not before this court. The Court proceeding is a matter of record. Those could be produced before the trial Court without seeking an amendment in the plaint. With a view to delay the hearing of the suit, the application was moved. Regular Civil Suit No. 1 of 1964 was a collusive suit. On the day on which it was filed, the same was compromised. The petitioners could have very well moved an application for amendment of the plaint at the earliest. The trial Court has rightly rejected the application. No interference therewith is called for.

8. True, the suit is of 1975. The application for amendment has been moved after forty five year of filing of the said suit. The fact is, however, that the said suit was on *sine die* list since the issue of tenancy has been referred to the tenancy authorities for finding thereon. It is only in December 2019 the finding of the said issue has attained finality. Literally, the suit has been revived just a year before. Learned counsel for the petitioners admit that even if the proposed amendment is allowed, the issue of tenancy will not be

revived. Since the suit dates back to 1975, proviso introduced to Rule 17 to Order VI of the Civil Procedure Code by way of amendment of 2002 has no application. The petitioners want to prove the fact that possession of their father had been admitted by the landlord (Defendant No.4) in a proceeding. It needs no mention that admission has to be proved like any other fact. To produce an evidence in proof of fact, there has to be foundation in the pleadings. The alleged admission is said to have been made in the Court proceeding. As such, it is a matter of record. Copy thereof is not before this Court. The petitioner will have to produce the same before the trial Court.

9. It needs no mention that Court may, at any stage of the proceeding, allow either party to alter or amend its pleadings. If the proposed amendment is allowed, nature of suit is not going to be altered. It is reiterated that on allowing the application, no issue of tenancy can be revived. In my view, the trial Court was impressed by the fact that there is delay of forty five years in moving an application for amendment and if the same is allowed, it will revive the claim of tenancy. It is reiterated that the suit was on *sine die* list until December 2019. The proceeding in the suit before the trial Court commenced only after the decision in Writ Petition No. 211 of 2006, whereby findings on tenancy issue attained finality. As such, there is no delay in moving the application for amendment of the plaint. For just decision of the suit, the proposed amendment appears to be necessary.

The trial Court should have allowed the same. Since the application has been rejected by the trial Court, interference is called for with the impugned order.

10. The petitioners are required to be saddled with heavy cost of Rupees Ten Thousand since after the impugned order has been challenged in this writ petition, they have again moved similar application before the trial Court.

11. For the reasons hereinabove, writ petition is allowed in terms of following order :-

ORDER

- (I) Order dated 24th June, 2020 passed by 2nd Joint Civil Judge, Senior Division, Osmanabad rejecting application Exh. 273 in Regular Civil Suit No. 98 of 1975 is hereby set aside.
- (II) Application Exh. 274 is allowed.
- (III) The petitioners to pay the contesting respondents Rupees Ten Thousand (Rs.10,000/-) towards cost.
- (IV) The cost be paid before the trial Court.
- (V) Rule is made absolute.

(R.G. AVACHAT, J.)