

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

974 WRIT PETITION NO.14556 OF 2019

**LATE BHIKA NAMDEO MALI THROUGH
LRS RESHAMBAI BHIKA MALI AND OTHERS
VERSUS
DWARAKABAI SUKDEO MALI**

...
Advocate for Petitioners : Mr. Madhav M. Bhokarikar
Advocate for Respondent : Mr. Vinod Patil h/f. Mr. H.P. Randhir
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CORAM : SANDEEP V. MARNE, J.

DATE : 11-10-2022

PER COURT :

. By the present petition, the petitioners have challenged the order dated 09.04.2019 passed by Civil Judge, Junior Division Bhadgaon on application (Exh.38) filed in Regular Civil Suit No.22 of 2014. By that order the petitioners' application for amendment has been rejected.

2. I have gone through the order passed by the trial Court. The petitioners application for amendment is rejected essentially on two grounds viz. (i) that the petitioners were seeking relief dependent on future contingency, which was inconsistent with the relief already sought in the plaint, and (ii) that the relief sought by way of proposed amendment was barred by limitation.

3. In my opinion both the reasons cited by the trial Court for disallowing the amendment are clearly erroneous. It is always permissible for a party to raise alternate pleas or to seek alternate reliefs in a suit. Therefore, merely because the petitioners - plaintiffs wish to incorporate an alternate prayer in the suit by way of amendment, the same could not have been a reason to disallow the amendment. So far as the second ground of rejection is concerned, in my opinion whether the relief sought is barred by limitation is something which would be decided only at the final adjudication of the suit. While deciding the application for amendment, the trial Court ought not to have determined the issue of limitation with regard to the added prayer. Thus, on both the grounds the order passed by the trial Court appears to be erroneous.

4. Mr. Bhokarikar, the learned counsel appearing for the petitioners submits that the evidence in the suit is yet to commence and the trial Court has passed an order on 06.08.2022 directing that in the event of the plaintiffs failing to produce evidence, the suit would be listed for dismissal.

5. This indicates that the trial in the suit is yet to commence. In my opinion therefore the trial Court ought to have

permitted the amendment proposed by the petitioners - plaintiffs.

6. In the result, the impugned order dated 09.04.2019 passed by the Joint Civil Judge, Junior Division, Bhadgaon on application below Exh.38 is set aside and the petitioners application for amendment stands allowed.

7. Both the counsels appearing before this Court prays to expedite the hearing of the suit.

8. Considering the fact that the suit has been pending since the year 2014 and the amendment is allowed in the year 2022, I hope and trust that the petitioners shall not seek any unnecessary adjournment in the suit and will co-operate with the Court in early disposal of the suit.

(SANDEEP V. MARNE, J.)

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