

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

WRIT PETITION NO.8451 OF 2022

Vijaykumar Pralhadiram Goyanka,
Age: 61 Years, Occu: Agri & Business,
R/o: Through Goyanka Brothers,
Shop No.52-53, Old B.J. Market, Ground Floor,
Dist. Jalgaon. ..Petitioner

Versus

1. Bebabai Ramkrushna Patil,
Age: 66 years, Occu: Household,
R/o. 5-A, Mahavir Nagar, Tq. & Dist. Jalgaon.
2. Satish Madhukar Mahajan,
Age: 48 years, Occu: Agri & Business,
R/o Plot No.13, Ganesh Wadi,
Jilhapeth, Tq. & Dist. Jalgaon.

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Mr. Mangesh G. Patil, Advocate for the Petitioner.
Mr. S. S. Dande, AGP for Respondents-State.
Mr. Dipesh D. Pande, Advocate for Respondent No.2.

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**CORAM : SANDEEP V. MARNE, J.
DATED : 23rd NOVEMBER, 2022.**

ORAL JUDGMENT:-

1. By this petition petitioner assails order dated 20.02.2019 passed by the 4th Joint Civil Judge, Junior Division, Jalgaon at Exhibit-28 seeking amendment to the plaint and addition of defendants. By that application plaintiff prayed for impleadment of proposed defendant nos.3 to 11, who are purchaser of the suit property and have purchased the same from defendant no.2. No doubt, there is gross delay in moving application for impleadment and amendment in that the Trial Court has recorded a finding that while replying the notice of plaintiff, defendant no.2 had specifically intimated the factum of

sale of property to plaintiff on 12.09.2011 itself. Despite this position, plaintiff failed to implead the purchaser of the land in his suit filed in the year 2013. Therefore, Trial Court cannot be faulted for rejecting the plaintiff's application.

2. However, one factor which the Trial Court has lost sight of is non-commencement of the trial in the suit. Before the trial in the suit commences, plaintiff can amend the suit at any time. The restriction under proviso to Order 6 Rule 17 of the Code of Civil Procedure is applicable only when trial in the suit commences. In the present case, admittedly the trial is yet to start, as plaintiff is yet to file affidavit of evidence. In that view of the matter, the amendment and impleadment application filed by plaintiff can be allowed. However, this cannot be without imposition of costs on plaintiff for being extremely casual in prosecuting the suit. The respondent no.1 whose notice has returned unserved has been proceeded ex-parte in the suit and therefore, the present petition can be entertained and decided without presence of respondent no.1.

3. Accordingly, I proceed to pass following order:

ORDER

A. The order dated 20.02.2019 passed by 4th Joint Civil Judge, Junior Division, Jalgaon is set aside. The plaintiff's application at Exhibit-28 stands allowed in terms of the prayers made therein.

B. The Trial Court to take up necessary steps for service of summons of the newly added defendants. The defendant no.2 will be entitled to file an additional written statement to deal with the amended plaint.

C. The plaintiff to pay costs of Rs.10,000/- to defendant no.2 within a period of four weeks from today.

4. Writ Petition is allowed. Rule made absolute in above terms.

(SANDEEP V. MARNE)
JUDGE

Devendra/November-2022