

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 2304 OF 2020

Shankar Narayan Raut, Aged about
66 years, Occ – Business, R/o
Deulgaon Raja, Tq. Deulgaon Raja,
District Buldhana

.... **PETITIONER**

// **VERSUS** //

1. Bhagwan Narayan Raut, (Deceased
Through L.R.)
- 1A. Smt. Mankarnabai Bhagwan Raut
Aged – 73 years, Occ – Household
- 1B. Sau Kamal Digambar Varhade Aged
– 46 years, Occ – Household

R/o New Shanty Niketan Colony,
Aurangabad, Tq and District
Aurangabad,
- 1C. Raghuvir Bhagwan Raut Aged – 48
Years, Occ – Business
- 1D. Gajanan Bhagwan Raut, Aged – 42
Years, Occ – Labour
- 1E. Dyaneshwar Bhagwan Raut, Aged –
35 Years, Occ – Labour, 1A, 1C, 1D,
1E

R/o Ahinsa Marg, Devulgaon Raja,
Tq. Deulgaon Raja, District Buldana.

.... **RESPONDENTS**

Dr. Mrs. R.S. Sirpurkar, Advocate for the petitioner.
Shri A.J. Thakkar, Advocate for respondent nos. 1C, 1D, 1E.

CORAM : ROHIT B. DEO, J.
DATED : 28.02.2022

ORAL JUDGMENT :

Heard. **RULE.** With consent, the petition is heard finally.

2. The petitioner is the defendant in Regular Civil Suit 232 of 2003, which is instituted by the deceased respondent 1 Bhagwan Narayan Raut seeking declaration of ownership and possession and perpetual injunction. The defendant sought amendment of the written statement vide application dated 24.03.2014, which the Trial Judge rejected vide order dated 29.09.2014.

3. **Undeterred**, after the evidence of the plaintiffs was over, and the defendant examined two witnesses, the defendant preferred an application dated 05.04.2019 seeking amendment; which the Trial Court rejected vide order dated 27.09.2019.

4. The defendant is assailing both the rejection orders i.e. order dated 29.09.2014 and order dated 27.09.2019, in this petition.

5. Irrefutably, since the evidence of the plaintiffs is over, and the evidence of the defendant has substantially progressed, the *proviso* to Order VI Rule 17 of Civil Procedure Code comes into play and the defendant was obligated to substantiate that despite due diligence, he could not have sought the amendment prior to the commencement of the trial.

6. Perusal of the amendment application reveals that there is no attempt made whatsoever to establish due diligence. A vague and omnibus statement is made that information was gathered as regards certain old and important revenue documents concerning the suit property. The nature of the documents is not disclosed nor is it disclosed how and when the information was gathered.

7. The learned Trial Judge recorded a finding that in essence, the same averments which the defendant sought to incorporate in the written statement in 2014, and was unsuccessful, are incorporated in the proposed amendment. This finding is consistent with the record. Presumably, it is in view of this finding, that the 2014 rejection order is also challenged in this petition, after more than 5 years of the rejection.

8. Apart from the reasons recorded by the learned Judge, I am satisfied that in the absence of even an attempt to establish due diligence, the *proviso* to Order VI Rule 17 of the Civil Procedure Code is attracted, and the proposed amendment is rightly rejected. The petition is absolutely frivolous and is dismissed, with a direction to the learned Trial Judge to expedite the hearing of the suit and to conclude the same, in any event, within the next six months.

(ROHIT B. DEO, J.)