

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

WRIT PETITION NO.5041 OF 2020

**VITHAL DATTATRAYA GHADGE DIED LRS AND OTHERS
VERSUS
CHANDRABHAN DATTATRAYA GHADGE AND ANOTHER**

...
Advocate for Petitioners : Mr. Prashant K. Deshmukh
Advocate for Respondent No.1 : Mrs. Jayashree Nawale, Advocate
h/f Mr. V.D. Salunke
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 26th JUNE, 2023

PER COURT :

1. Being aggrieved by the order dated 21/08/2019, passed by learned 3rd Joint Civil Judge, Senior Division, Osmanabad, below Exhibit-133 in Regular Civil Suit No.401/2000, petitioners have filed the present petition.

2. Respondent No.1/original plaintiff filed the suit for partition and separate possession of the properties mentioned in the plaint. Petitioners/defendant Nos.1, 2, 4 and 5 opposed the suit by filing written statement on 15/04/1998. Petitioners/defendant Nos.2 to 5 filed application Exhibit-133 for amendment of the written statement claiming that recently they have found documents of old suit from which they could gather that Survey Nos.29, 36 and 37 were purchased by their grandfather and these properties are their separately owned properties. However, vide sale

deed dated 14/03/1950 name of Krishna Chandulal Singade was nominally mentioned. Grandfather of defendants had filed suit for injunction against Krishna Chandulal Singade and the same was decreed. Therefore, they sought amendment in the written statement by adding paragraph Nos.16/A and 16/B to that effect. The said application is rejected by the Trial Court. Hence, the present petition.

3. Heard learned advocate for petitioners and learned advocate for respondent No.1. Perused the memo of writ petition, annexures thereto, the impugned order and reply filed by respondent No.1.

4. From the averments made in the amendment application, it is clear that just before filing of application Exhibit-133, defendants found documents pertaining to the earlier suit from which they came to know about the fact that properties Survey Nos.29, 36 and 37 are their separately owned properties, which were purchased by their grandfather by sale deed dated 14/03/1950. Name of Krishna Chandulal Singade was nominally mentioned in the sale deed. Suit was filed by grandfather of defendants against Krishna Chandulal Singade and the same was decreed. Amendment to that effect is sought by the defendants in their written statement.

5. Trial Court has ignored settled legal position that amendment is to be liberally allowed and merits of the amendment cannot be gone into at the stage of deciding application. Trial Court could have compensated the plaintiff for lack of due diligence on the part of defendants.

6. For the aforestated reasons, writ petition is allowed. Impugned order dated 21/08/2019, passed below Exhibit-133 in Regular Civil Suit No.401/2000, is hereby quashed and set aside. Application Exhibit-133 is allowed. Petitioners/defendants shall pay cost of Rs.10,000/- to the plaintiff in Trial Court.

7. Needless to mention that respondents are entitled to contest the maintainability of averments made by way of amendment, at the time of final adjudication of the suit.

(NITIN B. SURYAWANSHI, J.)