

VRJ

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.12681 OF 2023

Gautam Abaji Malgaonkar & Anr. ... Petitioners

V/s.

Mahaling Nivrutti Mahar Khandekar ... Respondent

Digitally
signed by
VAIBHAV
RAMESH
JADHAV
Date:
2023.10.20
10:21:53
+0530

Mr. Nagesh Y. Chavan for the petitioners.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 19, 2023

P.C.:

1. The petitioners/original defendants are challenging order dated 26th June 2023 passed by the Trial Court allowing application for amendment filed by the respondent to incorporate relief of possession.
2. The application for amendment is filed before framing of issues. Since the application is filed before commencement of trial, proviso of Order 6 Rule 17 of the Civil Procedure Code, 1908, is not attracted. It is not in dispute that the petitioners will be entitled to file fresh suit claiming relief prayed in the application for amendment. Therefore, to avoid multiplicity of proceeding, the Trial Court has allowed the amendment. There is no error of jurisdiction.
3. The writ petition is dismissed. No costs.

(AMIT BORKAR, J.)