

VRJ

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

WRIT PETITION NO.8063 OF 2023

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Date: 2023.11.07
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Ismail Yakub Shaikh & Anr.

... Petitioners

V/s.

Sohrab Homi Pavri & Anr.

... Respondents

Mr. Yogesh Patil for the petitioners.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 6, 2023

P.C.:

1. The petitioners are original plaintiffs who filed a suit for specific performance of oral agreement for period of five years starting from December 2018 to November 2023. In the alternative, relief of damages along with compensation is also sought. The petitioners described suit property in paragraph 1 of the plaint.

2. Before commencement of trial, the petitioners filed application for amendment of plaint to get details of the suit property along with map. The Trial Court, by the impugned order, has rejected the application.

3. The petitioners have, therefore, filed present writ petition.

4. This Court on 5th July 2023 issued notice to the respondents. The office remark shows that respondent Nos.1 and 2 are served

through Court. Despite service, none appears for respondent Nos.1 and 2 either personally or through advocate.

5. On perusal of the impugned order, it appears that the Trial Court has rejected the application by holding that the plaintiffs are trying to fill up lacuna and such application needs to be filed before adjudication of temporary injunction application. In my opinion, once the application is filed before commencement of trial, the due diligence as required under proviso to Order 6 Rule 17 of the Civil Procedure Code, 1908, is not necessary to be satisfied. Therefore, unless the amendment is inconsistent with the earlier case or withdraws admission in favour of other parties or barred by law of limitation, or introduces new cause of action, the Trial Court was not justified in rejecting the application. The amendment has effect of giving details of description of the suit property.

6. Hence, following order:

a) The impugned order dated 22nd February 2023 passed by 2nd Joint Civil Judge, Junior Division, Vadgaon Maval, District Pune in Regular Civil Suit No.188 of 2019 below Exhibit-99 is quashed and set aside.

b) The application below Exhibit-99 in Regular Civil Suit No.188 of 2019 is allowed.

7. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)