

VRJ

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

WRIT PETITION NO.12314 OF 2016

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Swapnil Mohan Gaikawad

... Petitioner

V/s.

Kisan Tukaram Gaikwad & Ors.

... Respondents

Mr. Sandeep S. Salunkhe for the petitioner.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 19, 2024

P.C.:

1. By the impugned order, the Appellate Court has allowed the application for amendment filed before commencement of trial.
2. According to learned advocate for the petitioner, the petitioner is trying to fill-up lacuna by taking a plea which is inconsistent with the plea of existence of joint family property pleaded in the plaint. According to him, in the plaint, the plaintiffs pleaded that the suit properties are joint family properties. However, in the application for amendment the respondents want to incorporate a pleading that the suit properties were purchased from income of joint family properties. In my opinion, this pleading cannot be said to be inconsistent. At the most, this will amount to clarification of the earlier plea raised by the respondents in their plaint.

3. Learned advocate for the petitioner next contended that in the plaint as filed, it did not incorporate all joint family properties. However, by way of amendment, the respondents seek to incorporate additional properties to remove fatal defects in the plaint.

4. Since the application was filed before commencement of trial, it was open for the plaintiffs to incorporate said amendment to remove the defect of non-joinder of necessary properties. Hence, in my opinion, the Trial Court was justified in allowing the amendment. There is no merit in the writ petition. The writ petition is, therefore, dismissed.

5. Pending interlocutory application(s), if any, stand disposed of.

(AMIT BORKAR, J.)