

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.16639 OF 2024

1. **Machhindra Dasharat Gaikavad**
Age : 54 Years, Occupation : Agriculturist,

2. **Gautam Dasharat Gaikavad**
Age : 56 Years, Occupation : Agriculturist,

Both residing at : Sitewadi, Post : Madha,
District : Pune.

At present residing at : Kacharu Gaikawad
Chawal, Budha Colony, S.G. Burve Marg,
Pipe Line Road, Kurla (East), Mumbai -
700 071.

...Petitioners

Versus

1. **Tulshiram Bapu Mojad**
(Since deceased through Legal Heirs)

1(1). **Sakhubai Tulshiram Mojad**
Age : 77 Years, Occupation : HH,
(Since deceased through Legal Heirs)

1(1A) **Asha Dadabhau Modhve**
Age : 35 Years, Occupation : Housewife,
At Post : Madh, Taluka : Junnar,
District : Pune.

1(1B) **Tara Vilas Pansare**
Age : 33 Years, Occupation : Housewife,
Residing at : Sitewadi, Post : Madh,
Taluka : Junnar, District : Pune.

1(1C) Vijaya Shantaram Naikodi

Age : 30 Years, Occupation : Housewife,
Residing at : Sangnore, Post : Pimpalgaon Joga,
Taluka : Junnar, District : Pune.

1(2) Samanbai Tulshiram Mojad

Age : 65 Years, Occupation : HH,
Residing at : Sitewadi, Post : Madha,
Taluka : Junnar, District : Pune.

2. Pradip Pandurang Jadhav

Age : 37 Years, Occupation : Agriculturist,
Residing at : Otur, Taluka : Junnar,
District : Pune.

3. Nilesh Sakharam Gunjal

Age : 40 Years, Occupation : Agriculturist,
Residing at : Chhatrapati Shivaji Nagar,
Junnar, Taluka : Junnar, District : Pune.

4. Chandrakant Laxman Dumbare

Age : 56 Years, Occupation : Agriculturist,
Residing at : Otur, Taluka : Junnar,
District : Pune.

5. Tushar Balkrishna Pansare

Age : 48 Years, Occupation : Agriculturist,
Residing at : Brahman Budhwar Peth, Junnar,
Taluka : Junnar, District : Pune.

6. Anil Laxman Dumbare

Age : 59 Years, Occupation : Agriculturist,
Residing at : Otur, Taluka : Junnar,
District : Pune.

7. Shantaram Kurubhai Kadam

Age : 49 Years, Occupation : Agriculturist,
Residing at : Sangnore, Post : Madha,
Taluka : Junnar, District : Pune.

8. **Taibai Kishan Rokade**

Age : 69 Years, Occupation : HH,
Residing at : Padali, Taluka : Junnar,
District : Pune.

9. **Jaibai Lavhaji Sonavane**

Age : 67 Years, Occupation : HH,
Residing at : Sonavale, Taluka : Junnar,
District : Pune.

...Respondents

Mr.Rajendra V. Kambale a/w Mr.Sunil S. Sonawane:-	Advocates for Petitioners.
No one is present:-	On behalf of Respondents.

CORAM : S. M. MODAK, J.

DATE : 25th NOVEMBER 2024**P. C. :-**

1. Heard learned Advocate for the Petitioners-Plaintiffs.
2. The trial Court has rejected the Application of amendment in the Plaint as per the order dated 7th October 2024. (Page No.32). It is for the reason, that the Application was filed post commencement of the trial. In fact, the hearing of the Suit which is of the year 2018 is expedited by this Court. This is recorded in Para No.12 of the impugned order. There is an order of extension also passed by this Court on 1st October 2024. (Page No.58).
3. The trial Court opined, the Plaintiff has not satisfied the test of Satish Sangar

‘due diligence’.

4. This Application was filed on the basis of an information received by the Plaintiff – Machhindra from Defendant No.7 on 17th September 2024 on telephone. The Plaintiff – Machhindra met him and he was told by the Defendant No.7 about tracing out various documents as referred in Para No.3(b). (Page No.23). On the basis of this information, the Plaintiff has sought amendment in the Plaint thereby pleading about those documents and prayer clause.

5. **Admittedly, this Application is filed after commencement of the trial.** The trial Court has referred in Para No.6 about the stage of the Suit. The Plaintiff has also cross-examined the witnesses for the Defendants. Now, whether it can be said that the said amendment Application is filed on the basis of new cause of action which alleged to have taken place on 17th September 2024?

6. Reliance is placed on the observations in cases of:-

- (i) ***Surender Kumar Sharma V/s. Makhan Singh***¹
- (ii) ***Rajesh Kumar Aggarwal and Ors. V/s. K.K. Modi and Ors.***²
- (iii) ***North Eastern Railway Administration, Gorakhpur V/s. Bhagwan Das (D) by Lrs.***³

1 MANU/SC/1674/2009

2 MANU/SC/8043/2006

3 MANU/SC/7481/2008

7. In case of ***Surender Kumar Sharma*** (supra), the Hon'ble Supreme Court allowed the amendment in the plaint. Though it was filed at belated stage, it was allowed only with a view to resolve the controversy. (Para No.7). After reading the said judgment, it can be said that the observations are on the basis of facts of that case.

8. The observations made in case of ***Rajesh Kumar Aggarwal*** (supra) are also on the basis of facts of that case. In a suit filed in the High Court of Delhi, the Plaintiff exercised an option to pray for amendment in the plaint. The Hon'ble Supreme Court has put a seal of approval on the prayer for amendment. Therein also, the Hon'ble Supreme Court applied "*the real controversy test*". (Para No.12).

9. In case of ***Bhagwan Das*** (supra), the amendment Application was filed during the pendency of the second Appeal. The second Appeal was dismissed so also, amendment Application. When the Supreme Court dealt with the Civil Appeal, reiterated the principles governing the amendment prayer. Again, the "*the real controversy test*" is considered. (Para No.15).

10. **When the facts of the Suit are considered, it cannot be said as a fresh cause of action.** The reason is, the Defendant No.7 is supporting

the Plaintiff. Not only that, in the Plaint, there is a prayer (a) which talks about declaration as to ownership on the basis of possession of the Plaintiff as well as Defendant Nos.7 to 9. So, when the Plaintiff is fighting for himself as well as Defendant No.7, the Defendant No.7 ought to have been vigilant about the issues involved in the Suit. These documents were found with him is the case pleaded by the Plaintiff. In fact, this fact damages the case of the Plaintiff while seeking amendment.

11. There are reasons to believe that this is the ostensible reason shown for seeking the amendment. The amendment is sought after the commencement of the trial. As such, proviso to Order VI, Rule 17 of the Code of Civil Procedure, 1908 (“CPC”) is applicable. There is only one parameter for considering such Application. It talks about ‘*due diligence*’ of the party. When considered from that perspective, it cannot be said that either the Plaintiff or the Defendant No.7 were diligent in seeking amendment. This is more relevant particularly when the amendment is sought on the basis of documents found with Defendant No.7 only. It is not their case that they were found with some other person. I am not inclined to entertain this Petition.

12. For the reasons stated above, the observation in above referred judgments is not applicable to the facts in this Petition.
13. The facts of these cases are different.
14. For the reasons stated above, the **Writ Petition cannot be entertained and hence, dismissed.**
15. The trial Court need not be influenced by the observations made hereinabove.

[S. M. MODAK, J.]