

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

**Writ Petition No. 17172 of 2024**

1. Shri Nileshkumar Jashvantsinh Parmar  
Residing at: Mori falia, Naroli, D&NH.
2. Smt Kanchan Jashwantsinh Parmar (Daughter)  
R/o Mori Falia, Naroli U.T of D&NH.
3. Smt Sarlaben Jashwant Parmar (Daughter)  
Adult, R/o Mori Falia, Naroli, U.T of D&NH
4. Smt Naynaben Jashwantsinh Parmar (Daughter),  
R/o Mori Falia, Naroli, U.T of D&NH .... Petitioners

Versus

1. Bochasanwasi Shri Akshar Purushottam Swaminarayan  
Sanstha, Public Charitable Trust,  
having its head office at:  
BAPS Swaminarayan Temple, Shahibag Road,  
Ahmedabad
2. Sadhu Keshavjivandasji Guru Gyanjivandasji  
(President), Aged- 86 years, Occupation- Priest,  
Residing at- BAPS Swaminarayan Mandir  
Bochasan, Tal-Borsad, Dist.- Anand 388140.
3. Sadhu Swayamprakashdasji Guru Gyanjivandasji  
(Trustee), Aged-87 years, Occupation- Priest,  
R/O.- BAPS Swaminarayan Temple,  
Shahibagh Road, Ahmedabad 380004.
4. Sadhu Ishwarcharandasji Guru Gyanjivandasji  
(Trustee), Aged-82 years, Occupation- Priest,  
R/O.- BAPS Swaminarayan Temple,

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Shahibagh Road, Ahmedabad 380004.

5. Sadhu Tyagvallabhdasji Guru Gyanjivandasji  
(Trustee), Aged-82 years, Occupation- Priest  
R/O.- BAPS Swaminarayan Mandir, Bochasan,  
Tal-Borsad, Dist- Anand, 388140.
6. Sadhu Bhaktipriyadasji Guru Gyanjivandasji  
(Trustee), Aged- 82 years,  
Occupation- Priest,  
R/O.- BAPS Swaminarayan Mandir,  
Dadar (E), Mumbai.
7. Sadhu Anandswarupdasji Guru Narayanswarupdasji,  
R/O.Akshardham, Sector-20, J-Road,  
Gandhinagar, 382020.
8. Sadhu Atmaswarupdasji Guru Narayanswarupdasji,  
R/O.- BAPS Swaminarayan Temple,  
Shahibagh Road, Ahmedabad.
9. Shri Kiranbhai Krishnakant Pithwa,  
R/O.-503, Anuradha Apartment,  
Behind Akshardham Towers,  
Near Police Head Quarter,  
Shahibagh, Ahmedabad 380004.
10. Shri Dilipbhai Umedbhai Patel,  
R/O.-501, Tilak Colony, Road No.2,  
Swaminarayan Temple, Dadar(East), Mumbai
- 11 .Shri Nitinbhai Kishorebhai Gadhiya,  
R/o. 1303, Royal Jardin, Near Railway Bridge,  
Shahibag, Ahmedabad, 380004.
12. Shri Nirmalsinh Dhiruba Rana,  
R/O.- Dajibapu Yog, Yogi Nagar,  
Street No.14, Gondal, Dist.- Rajkot.

13. Shri Sandeepbhai Rajnikant Mehta,  
R/O.-23, Ratan Abaad, 3rd floor,  
Tukaram Jauji Road, Mumbai-400007.

All the above Through their power of attorney holder  
Shree Kanhaiyalal Ratilal Acharya,  
Aged-76, R/O-BAPS Swaminarayan Temple,  
Shahibag Road, Ahemdabad-380 004.

.... Respondents  
(Original Plaintiff)

14. Shri Prabhatsinh Jashwantsinh Parmar,  
Occupation: Agriculturist,  
Residing at: Kanadi fatak, Mori falia,  
Naroli, D&NH.

15. Shri Arvindsinh Jashwantsinh Parmar,  
Hindu, Adult, Occupation- Agriculturist,  
Residing at: Jalaram society, Near Bahumali  
Complex Silvassa, D&NH.

16. Shri Doulatsinh Jashvantsinh Parmar,  
Hindu, Adult, Occupation- Agriculturist,  
Residing at: Khanda Kuwa Rasta, Holi Moro,  
Naroli, D&NH.

.... Respondents  
(Original defendants.no1,3,4)

|                                             |                                         |
|---------------------------------------------|-----------------------------------------|
| Mr. R.M.Haridas i/b. Mr.<br>Somnath Thengal | Advocate for the Petitioners            |
| Mr. Aniket Shrivastav i/b. Askhar<br>Laws   | Advocate for Respondent Nos.1<br>to 12. |

**CORAM : S.M. MODAK, J**

**DATE : 02 December 2024.**

**ORAL JUDGMENT :**

In fact when the matter is called out, it is submitted on behalf of learned Advocate for Respondent Nos.1 to 12-plaintiffs that learned Senior Advocate Godbole has left the Court under the belief that the matter will not reach because at that time this Court was hearing one fixed matter. His belief may be right. When the matter is called out, the learned Advocate for the petitioner submitted that the issue involved in this petition is very short and he requested for keeping this matter in the next week. This is not possible considering the other workload.

2. That is why on insistence, I have heard learned Advocate for the petitioners/defendant Nos.2a to 2d who are the legal heirs of deceased-defendant No.2 Jashvantsinh.

3. **Rule.** Rule made returnable forthwith. Heard finally by consent of the parties.

4. The learned Advocate for the petitioners has tried his level best to convince me that amendment in the plaint is not justified on facts and on law. He raised five points:-

- (i) The amendment application was filed on 5 March 2024 whereas suit is of the year 2012 and already plaintiffs have filed the affidavit of examination-in-chief and the proviso to Order VI Rule 17 of CPC is applicable. The plaintiffs have not satisfied the test of due diligence.

- (ii) By way of this amendment certain paras were included and there is also addition of relief against all the defendants (Page-38).
- (iii) The contention “*is in the main suit there is only prayer for specific performance against defendant No.1.*” Except against him there are no other prayers against rest of the defendants. If it is so, plaint cannot be amended by inserting the additional prayers against those defendants against whom originally there was no prayer.
- (iv) Already the plaintiffs have filed temporary injunction application and as per the endorsement (dated 20 July 2024) put on that application, the plaintiffs have agreed for hearing of this application along with the main suit.
- (v) There is a proceeding of first appeal going on *inter se* in between the defendants and it is pending in this Court. Already there is a status-quo granted by this Court in respect of properties involved in that appeal including suit land also (Page No.44).

5. The contention is there is no relief originally sought against all the defendants except one, this amendment ought not to have been allowed. I will deal with them individually.

#### **Consideration**

6. It is a matter of record that the affidavit of evidence is filed by the plaintiffs. It is true that if the amendment application is filed

after commencement of the trial, the test of due diligence has to be satisfied but the Court has to see what is cause of action for filing the amendment application. In Para No.5 of Page No.36, the plaintiffs have averred about happening of event on 3 December 2023. It refers to

*“visit by one Praveensinh Bharatsinh to the temple and he saw some person on the suit land. On enquiry he came to know that the owners desire to sell the land and that person had come to see the land. “*

This happened on 3 December 2023. At this stage it cannot be decided whether this incident really took place or not. It relates to merits of those averments. If this has happened on 3 December 2023, it is a cause of action different from the original cause of action. As such the test of due diligence cannot be made applicable.

7. It is a matter of record that the relief sought in the plaint is for specific performance and that too only against defendant No.1. It is on the basis of agreement for sale executed on 21 February 2008 (Para-3,Page-24). The relationship of defendant No.1 with other defendants is pleaded in Para No.2. It says defendant No.2 (who has expired and present petitioners are his legal heirs) is the father of defendant No.1 whereas defendant Nos.3, 4 and 5 are brothers of defendant No.1. Admittedly, there is no relief sought against rest of the defendants. Why it is not sought cannot be commented by this Court while deciding this petition. It is for those defendants to

agitate that issue before the trial Court at an appropriate stage.

8. The suit is for specific performance and if the plaintiffs contend that the defendants are likely to alienate the suit property and **it is on the basis of some events that took place during the pendency of the suit, certainly plaintiffs have got right to ask that prayer by way of an amendment.** It cannot be said plaintiffs have to file a separate suit. It is for the reason in a set of facts specific performance and injunction, it deals with the same subject matter.

9. Even though the temporary injunction application was to be heard along with the suit, now what is sought to be amended is by way of permanent injunction. They have not asked for the temporary injunction on the basis of the cause of action that is referred in Para No.5.

10. It may be true that there is a status-quo order passed by this Court in a first appeal. It is not made clear whether the present plaintiffs are parties to that appeal. The status-quo order operates amongst the parties to that appeal. I do not think this will disentitle the plaintiffs to ask for amendment on the basis of cause of action mentioned in the amendment application.

11. Lastly, it is settled law that merits of the amendment cannot be decided at the time of deciding amendment application. The Court has only to see on what basis the amendment is sought. Whether it is on the basis of the same cause of action or a new cause of action.

The Court has to ascertain whether the nature of the suit is going to be changed or not. The Court has to consider whether the amendment is necessary without expressing the opinion about the merits. If considered on this perspective, I do not find that there is a merit in this petition. All the contentions raised opposing amendment can be the ground while opposing the newly added plaint by way of written-statement.

12. With these observations, **writ petition stands dismissed**. Rule is discharged accordingly.

(S.M. MODAK, J.)