



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

36 WRIT PETITION NO. 3010 OF 2022

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| 1. | Chandrakant Savleram Phadke | |
| 2. | Smt. Rohini Shivaji Phadke | Petitioners |

VERSUS

- | | |
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| 1. | Dr. Bhanudas Vishwanath Phadke |
| 2. | Bhimrao Laxmanrao Phadke |
| 3. | Sanjay Janardhan Phadke |
| 4. | Mukund Savleram @ Chaburao Phadke |
| 4A. | Usha Mukund Phadke |
| 4B. | Sandeep Mukund Phadke |
| 4B-1. | Ashwini Sandeep Phadke |
| 4B-2. | Yesh Sandeep Phadke |
| 4B-3. | Sakshi Sandeep Phadke |
| 4C. | Pratap Mukund Phadke |
| 5. | Sushilabai Savleram Phadke |
| 6. | Suraj Shivaji Phadke |
| 7. | Aadesh Shivaji Phadke |
| 8. | Gayabai Laxman Phadke |
| 9. | Smt. Shivnanda Rajendra Phadke |
| 10. | Rutuja Rajendra Phadke |
| 11. | Eknath Vishwanath Phadke (Died Through LRS) |
| 11-A. | Amol Eknath Phadke |
| 11-B. | Anagha Eknath Phadke |
| 12. | Arun Vishwanath Phadke |
| 13. | Arjun Vishwanath Phadke |
| 14. | Gangadhar Kashinath Phadke |
| 15. | Smt. Indubai Janardhan Phadke
Died Through LRS |
| 15-A. | Sanjay Janardhan Phadke |
| 16. | Vithal Janardhan Phadke |
| 17. | Shashikant Janardhan Phadke |
| 17-A. | Sunita Shashikant Phadke |
| 17-B. | Sagar Shashikant Phadke |
| 17-C. | Kuldeep Shashikant Phadke |
| 17-D. | Namrata Vaibhav Gaware |
| 18. | Sunil Janardhan Phadke |
| 19. | Smt. Chitrabai Diliprao Phadke |
| 20. | Abhijeet Diliprao Phadke |

21 Pallavi Parag Patil
22. Kalyani Nilesh Gadekar
23 Shobha Dnyaneshwar Lagad

Respondents

...
Mr. Yuvraj S.Choudhari, Advocate for the Petitioners
Mr. Narayan B. Narwade, Advocate for R.nos. 1 to 3, 8 to 23

...
CORAM : ROHIT W. JOSHI, J.
DATE : 25th AUGUST, 2025

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith and heard finally with the consent of the parties.
2. Defendant Nos. 2 to 4 in a suit for partition and separate possession being Regular Civil Suit No. 483 of 2012 have filed the present petition being aggrieved by the order dated 29.11.2021 passed by the learned Trial Court rejecting the application for amendment of written statement filed by them.
3. Respondent nos.1 to 3 are the original plaintiffs who have filed the said Suit for partition and separate possession. Deceased defendant no.1 and present petitioners who are defendants filed written statement and subsequently counter claim was also filed. The issues are framed in the matter vide Exhibit 103.
4. In this backdrop, defendant nos. 2 and 4 filed application for amendment of written statement after the demise of defendant no.1. It is stated that due to inadvertence certain material facts which were required to be pleaded in the written statement are not so pleaded. The learned Trial Court has rejected the said application vide order dated 29.11.2021 on the ground that defendant nos.2 and 4 had filed their written statement and also a counter claim. It is observed that they

have signed the earlier pleadings and also verified the contents thereof and as such it cannot be said that they were not aware about the facts which were sought to be incorporated by way of amendment. Apart from this, no other reason is recorded. I am afraid that the reason recorded is not a good ground for rejecting an application for amendment. Order dated 29.11.2021 is therefore quashed.

5. The learned Trial Court is directed to decide the application for amendment afresh by hearing rival submissions. The contention of the learned Advocate for respondent nos.1 to 3 original plaintiffs that the proposed amendment changes the nature of defense taken earlier as also counter claim filed by defendant nos. 2 and 4 (petitioners) is kept open.

6. The petition is **partly allowed** by quashing and setting aside order dated 29.11.2021 passed by learned Civil Judge, Senior Division, Shevgaon on application at Exhibit-118 in Regular Civil Suit No.483 of 2012 and by further directing the learned Court to decide the said application afresh.

7. Rule stands made absolute accordingly.

[ROHIT W. JOSHI J.]