



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1952 OF 2025

1. Jaysingh S/o. Shivajirao Pandit

Age-52 years, Occu.-Business,
R/o. Subhash Road, Beed,
Tq. & Dist. Beed.

2. Pratapsingh S/o. Vedprakash Patil

Age-50 years, Occu. Agri.
R/o. Magar Patta City, Pune
Tq. & Dist. Pune.

3. Dnyaneshwar S/o. Bhagwat Aarbad

Age-33 years, Occu. Agri,
R/o. Mategaon, Tq. Georai,
Dist. Beed.

...PETITIONERS

VERSUS

1. Sadhanabai W/o. Sahebrao Bhopale

Age 63 years, Occu- Agri & Household.

2. Kisan S/o. Mahadeo Raut

Age-46 years, Occu.- Service & Agri.
Both r/o. Beed, Tq. And Dist. Beed.

3. Kambalbai W/o. Wamanrao Raut

Age 68 years, Occu. Agri. & Household.

4. Sarjerao S/o. Wamanrao Raut

Age-32 years, Occu. Agri.

5. Lata S/o. Mahadeo Bedre

Age.-36 years, Occu. Agri. & Household

All R/o. Mukta Lawns, Balgujar, Barshi Road,
Beed, Tq. & Dist. Beed.

6. Lahane Charitable Trust

Through its Chief Promoter

6-A. Dr. Shrihari S/o. Limbajirao Lahane

Age.60 years, Occu. Medical Practitioner.

6-B. Rukhmini W/o. Shrihari Lahane

Age. 58 years, Occu. Medical practitioner.

Both R/o. Vithai Hospital Jirewadi, Jalna Road,
Beed, Tq. & Dist. Beed.

7. Dinesh S/o. Govardhan Hange

Age. 40 years, Occu. Legal practitioner
R/o. Mali Ves, Beed, Tq. & Dist. Beed.

8. Rajesh S/o. Govardhan Hange

Age-38 years, Occu.-Legal Practitioner
R/o. As above.

9. Udaysingh S/o. Bansidhar Pandit

Age-45 years, Occu. Agri,
R/o. Pandit Nursing Home, Jalna Road,
Beed, Tq. & Dist. Beed.

10. Ajaysingh S/o. Bansidhar Pandit

Age. 43 years, Occu. Agri.
R/o. As above.

11. Sahebrao S/o. Sonajirao Bhopale

Age. 77 years, Occu. Medical Practitioner &
Agri. R/o. Shahu Nagar, Beed, Tq. & Dist. Beed.

...RESPONDENTS

Mr.Amol S. Gandhi, Advocate for the petitioners.

Mr. G. K. Naik-Thigle, Advocate for the Respondents.

CORAM : KISHORE C. SANT, J.
RESERVED ON : 14th FEBRUARY 2025
PRONOUNCED ON : 4th MARCH 2025

ORDER :-

1. Heard the learned Advocate for the parties.
2. By consent of the parties, the petition is taken up for final disposal at the stage of admission.
3. This petition arises out of an order dated 3rd January 2025 passed by the learned 3rd Joint Civil Judge, Senior Division, Beed, allowing the application of present Respondent Nos.1 & 2, plaintiff in Special Civil Suit No.93 of 2019. The present petitioners are the original defendant Nos. 4, 5 and 6 and other respondents are the defendants in the suit.
4. By way of impugned order, the learned Judge has allowed the application Exh.321 filed by the plaintiffs seeking amendment in the prayer clause to the plaint.

5. The parties are referred to as per their original status for the purpose of convenience. The facts, in short, are that the plaintiff filed a suit seeking declaration that the sale-deed No.6701 of 2013 executed by present Respondent No.3 (defendant No.1) in favour of defendant Nos.4 to 6 i.e. petitioners, is not binding on the plaintiffs. Further relief claimed of injunction not to disturb the possession of the plaintiffs over the suit land. Issues were framed on 9th February 2021. The application was filed under Order VI Rule 17 of Code of Civil Procedure, 1908 (for short "C.P.C.") by the plaintiffs at Exh.147 in the suit. The said application came to be allowed. The said amendment was to add defendant Nos.7 to 11. After they were impleaded as parties to the suit, the present defendant Nos.4 to 6 filed an application under Order XIV Rule 5 of the C.P.C. for framing additional issues. Instead of framing of additional issues, the issue No.2 was amended. Thereafter, one more application was filed under Order VI Rule 17 of C.P.C. by the plaintiffs. The said application also came to be allowed. The plaintiffs even thereafter again filed one more application under Order VI Rule 17 of C.P.C. below Exh.219. The said application came to be allowed. It

appears that, all these orders were not challenged.

6. The plaintiffs now again filed an application Exh.321 in view of written statement of the defendant Nos.4 to 6 as in their say, they have disputed the possession of the plaintiffs over the land admeasuring 2 Acre 10R. In view of the same, it was prayed that the prayer be added that the plaintiff be declared as owner, possessor and title over the land described in paragraph No.1 in the plaint.

7. This application was heavily opposed by the learned Advocate for defendant Nos.4 to 6 mainly on the ground that the amendment is beyond limitation. It is further stated that the written statement was filed at Exh.44 long back. The plaintiffs were aware about the contents of the written statement. In the written statement, said defendants have denied the ownership and possession of the plaintiffs on the said land. The suit is now at the stage of final hearing. Even earlier in 2019, the applications were made for amendments and those were allowed. There is clear bar of Order VI Rule 17 of C.P.C. as the application is filed after commencement of trial and no due diligence is shown.

8. The learned Trial Judge after considering various judgments allowed the application. It is observed that the amendment is necessary to avoid technical difficulties. By way of amendment, only declaration of the ownership is sought. There is no dispute about the ownership and possession of the plaintiff. The dispute is only in respect of southern boundaries of the suit property. The plaintiff do not wish to lead any further evidence in view of proposed amendment. So it would not delay of the proceeding of the suit. The nature of the suit will not change. It is also held that, no prejudice would be caused to the defendant by allowing the application. It is on this, the petitioners have approached this Court.

9. The learned Advocate for the petitioners submits that earlier two amendments, applications were allowed by the Court and those attained finality. The suit proceeded further and now is posted for final hearing. At this stage, the plaintiffs have filed an application, the application is clearly time barred. The suit is filed in 2014. This application is filed on 11th November 2024. By incorporating relief of declaration, there would be change in the nature of the suit. The relief of declaration could have

been prayed when the suit was filed. The reason given in the application for filing amendment is that in the written statement the defendants have denied the ownership. This written statement at Exh.44 was filed long back i.e. 23rd November 2016. Thus, the plaintiffs were aware of the averments in the written statement. Issues are framed long back on the basis of pleadings. Thus, on the test of due diligence, the plaintiffs' application ought to have been rejected by the trial Court by allowing the application for amendment at the fag end of the trial. The object behind filing the application is clear that the plaintiffs wants to prolong the proceeding of the suit. The petitioner relied upon the following judgments:-

- (i) *Archana Ashok Amburle Vs. Arpana Shankar Dudham & Ors.*¹
- (ii) *Noor Kabirdin Meghani & Ors. Vs. Sanjeev Manuel D'Souza.*²
- (iii) *Ganpat Bhagoji Kshirsagar Vs. Anjana Krushna Jamdade.*³
- (iv) *Anita Anant Kaidalwar Vs. Suhas Manoharrao Umathe.*⁴

10. Mr.Naik-Thigle, the learned Advocate for the respondents vehemently opposed the petition. He submits that the learned Court has

1 2019(2) Mh.L.J.67

2 2021(5) Mh.L.J. 594

3 2024 DGLS (Bom.) 3902

4 2024 (4) Bom.C.R. 765

rightly considered the legal position and allowed the application. It is necessary in the interest of justice to allow the amendment. The Court has rightly used the discretion. The amendment is necessitated in view of denial of the rights of ownership and possession of the plaintiff. It is only in view of this, amendment is sought. He submits that the scope of interference at the hands of this Court while exercising Article 227 is very limited. The proviso to Order VI Rule 17 of C.P.C. is procedural and not a part of substantive law. He relied upon the judgments of the Hon'ble Apex Court in the cases of *Bharat Petroleum Corporation Ltd. Vs. Precious Finance Investment Pvt. Ltd.*⁵ and *Shalini Shyam Shetty and Ors. Vs. Rajendra Shankar Patil.*⁶

11. In the case of *Archana Amburle* (supra) is concerned, the amendment application was filed when the suit was posted for final argument and was adjourned on various dates and on one of the other grounds and at that stage, application was filed. The said application came to be rejected. This Court came to the conclusion that no case was made out to allow the application and rejected the petition.

5 2007 (1) Mh.L.J.331

6 (2010) 8 SCC 329

12. In the case of **Noor Meghani and Ors.** (supra) is concerned, the ground was very well available to the plaintiff when he instituted the suit. The amendment was neither based on any subsequent evidence nor on new ground that became available after filing of the suit. In that view, the application for amendment was rejected.

13. In the case of **Ganpat Kshirsagar** (supra), this Court considered that the amendment in the plaint was allowed at belated stage and considering that the writ petition was allowed by setting aside the order by which amendment application was allowed. In the case of **Anita Kaidalwar** (supra), the Court held that the defendant in that case failed to show due diligence. It was thus held that the proviso to Order VI Rule 17 of C.P.C. comes into play and though the trial Court observed that the defendant failed to prove due diligence and outstayed the application for amendment. In this view of the matter, this Court allowed the writ petition and quashed and set aside the order allowing amendment. This court finds that the petitioner has rightly placed reliance on above judgments.

14. So far as judgment in the case of ***Bharat Petroleum Corporation Ltd.*** (supra) is concerned, there is no dispute about the proposition. However, looking to the fact of this case it is clear that, the plaintiff has utterly failed to show due diligence. Filing of earlier two applications for amendments shows that it would have been a different case had plaintiff applied for such amendment immediately on filing of the written statement by the defendant. In the present case, the application is filed after almost eight years of filing of the written statement. This is material because in the application the plaintiff has stated cause for filing amendment application in view of averment in the written statement.

15. So far as judgment in the case of ***Shalini Shyam Shetty*** (supra) is concerned, it is held that it has discussed the powers of this Court for interference under Article 226 and 227 of the Constitution of India. There is no dispute about the same. However, looking to the facts of the present case, this Court finds that said judgment is not applicable in the facts of the present case.

16. From the record it is clear that by way of amendment, applications were filed by the plaintiff and those were allowed. The written statement was filed long back in 2016. Filing an application in 2024, i.e. after eight years of filing of the written statement it is difficult to accept. The very contents of application would show that the application is filed because of the averments in the written statement. This ground was available even when the first application for amendment was filed. Considering that, it is not only that issues are framed or evidence is started but now suit is posted for final hearing and at that stage, the application is filed.

17. Considering all above submission and the legal position, this Court finds that certainly the trial Court has committed a mistake by allowing the application. Hence, the following order:

ORDER

(i) Writ petition stands allowed.

(ii) The impugned order dated 3rd January 2025 passed below Exh.321 in Special Civil Suit No.93 of 2019 passed by the learned 3rd Joint Civil Judge Senior Division, Been is quashed and set aside.

(iii) Writ petition stands disposed off.

[KISHORE C. SANT, J.]