



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

WRIT PETITION NO. 5432 OF 2023

1. Shri. Baburao Namdev Nalwade,
Died Through L.R's.
 - 1.A Sitabai Baburao Nalwade,
Age: 83 Years, Occ: Household.
R/o Wangdari, Tq. Shrigonda, Dist Ahmednagar
 - 1.B Adika Bhimaji Gawali,
Age: 38 Years, Occ: Household.
R/o Hatwalan, Tq. Daund Dist. Pune
 - 1.C Kalpana Bapusaheb Nalwade,
Age: 48 Years, Occ: Household
 - 1.D Swapnil Bapusaheb Nalwade,
Age: 25 Years, Occ: Service
 - 1.E Pooja Bapusaheb Nalwade,
Age: 23 Years, Occ: Education,
R/O: All Respondent no. 1.C to 1.E
Swapnaraj Park, Tanhajinagar,
Near Darshan Hall, Chinchwad,
Pune-33
 2. Zumbar Baburao Nalwade,
Age: 38 Years, Occ: Agriculture.
 3. Vinaayak Baburao Nalwade,
Age: 38 Years, Occ: Agriculture.
Both Respondent no, 2 and 3,
R/o Wangdari, Tq. Shrigonda,
Dist: Ahmednagar.
- ...Petitioners

VERSUS

1. Tukaram Keshav Nalwade (deceased)
Through his Lr's.

- 1.A Deubai Tukaram Nalwade,
Age: 65 Years, Occ: Household.
- 1.B Krishnabai Balasaheb Khamkar,
Age: 45 years, Occ: Household
Deceased through LR's
[Amendment carried out as per order dtd. 13.11.2024]
- 1-B-1. Balasaheb Tukaram Khamkar (Husband)
Age: 78 years, Occ: Agriculture
R/o Anandwadi, Post Ajnuj,
Tq. Shrigonda, Dist. Ahmednagar
- 1-B-2. Tukaram Balasaheb Khamkar (Son)
Age: 60 years, Occ: Agriculture
R/o Anandwadi, Post Ajnuj,
Tq. Shrigonda, Dist. Ahmednagar
- 1-B-3. Baisaheb Chakradhar Zende (Daughter)
Age: 56 years, Occ: Household
R/o Chikli, Post Ajnuj,
Tq. Shrigonda, Dist. Ahmednagar
- 1-B-4. Jyotiram Balasaheb Khamkar,
Age: 54 years, Occ: Agriculture,
R/o Anandwadi, Post Ajnuj,
Tq. Shrigonda, Dist. Ahmednagar
- 1-B-5. Motilal Balasaheb Khamkar
R/o Anandwadi, Post Ajnuj,
Tq. Shrigonda, Dist. Ahmednagar
- 1.C Mahadeo Tukaram Nalwade,
Age: 40 Years, Occ: Agriculture.
- 1.D Sudam Tukaram Nalwade,
Age: 38 Years, Occ: Agriculture.
- 1.E Godabai yashwant Gaikwad,
Age: 42 Years, Occ: Household.
- 1.f Indubai Namdeo Mhaske,
Age: 45 Years, Occ: Household.

- 1.G Shivaji Tukaram Nalwade,
Age: 40 years, Occ: Household.
Respondents no.1a. to 1g
All R/o Anandwadi,
Post Ajnooj, Tq. Shrigonda,
Dist. Ahmednagar
- 1.H Shahaji Tukaram Nalwade,
Deceased Through Ir's,
- 1.H.A Sanjana Shahaji Nalwade,
Age: 43 years, occ: Household.
- 1.H.B Nitin Shahaji Nalwade,
Age: 28Years, Occ: Education
- 1.H.C Sachin Shahaji Nalwade,
Age: 25 years, Occ: Education
- 1.H.D Rani Sachin Bhosale
Age: 33 Years, Occ: Household
All Respondent No. 1.H.A to 1.H.D
C/o Sachin Balasaheb Bhosale/
At post Karkhel Tq. Baramati Dist. Pune.
- 1.I Popat Tukaram Nalwade
Age: 42 Years, Occ: Agriculture
R/o Anandwadi,
Post Ajnooj, Tq. Shrigonda
Dist. Ahmednagar.
2. Bajirao Sonu Galande Deceased
Through his L.R's.
- 2.A Keru Bajirao Galande
Age: 63 Years, Occ: Agriculture
- 2.B Narayan Bajirao Galande
Age: 59 years, Occ: Agriculture
- 2.C Haribhau Bajirao Galande
Age: 58 Years, Occ: Agriculture
- 2.D Balasaheb Bajirao Galande
Age: 55 years, Occ: Agriculture

- 2.E Badabai Raghu Kaldate,
Age: 55 years, Occ: Agriculture
R/o Chincholi Kaldate,
Tq. Karjat, Dist. Ahmednagar
- 2.F Adikabai Raosaheb Arde
Age: 50 years, Oce: Agriculture
R/o Kamthi, Po. Mandavgan
Tq. Shrigonda, Dist. Ahmednagar.
- 2.G Indubai Bajirao Galande,
Age: 73 years, Occ: Agriculture
Respondent no. 2.A to 2.d and 2G
All R/o Deulgaon, Tq. Shrigonda
Dist. Ahmednagar.
3. Kondabai Sonu galande @
Kondabai Jaysing Jangale (deceased)
Through Her Lr's
- 3.A Rajendra Jaysing Jangale.
Age: 40 Years, Occ: agriculture
- 3.B Ranjana Balu Jangale
Age: 43 Years, Occ: Household
Respondent no. 3.A and 3.B
All R/o Jangalewadi, Tq. Shrigonda
Dist. Ahmednagar.
4. Tatyasaheb Ragnath Bhujbal
Age: 59 years, Occ: Agriculture
5. Kishor Chandrakant Bhujbal
Age: 30 years, Occ: Agriculture
All Respondent no 4 and 5 R/o Wangdari,
Tq. Shrigonda, Dist. Ahmednagar.

... Respondents

Appearance :

Mr. S. S. Kulkarni, Advocate for the Petitioners.

Mr. A. V. Hon, Advocate for Respondent Nos.4, 5, 1(B) to 1(G), 1(H)
(D), 1(I), 3(A), 3(B), 2(A) to 2(G), 1(H)(A), 1(H)(B), 1(H)(C), 1(H)(D),
1.B.1, 1.B.3, 1.B.5.

CORAM : NEERAJ P. DHOTE, J.
RESERVED ON : 20th November, 2025
PRONOUNCED ON : 11th December, 2025

FINAL ORDER :

1. Impugned in this Writ Petition under Article 227 of the Constitution of India is the order dated 20/02/2023, passed by the District Judge – 2, Shrigonda below Exhibit – 66, in Regular Civil Appeal (RCA) No.122/2019, rejecting the Application for amendment in the Plaint.

2. Brief facts of the case are as follows :

[I] The Petitioners are the Original Plaintiffs. They filed Regular Civil Suit (RCS) No.100/2000 for declaration of ownership of the agricultural land Gat No.33 admeasuring 2 Hectare 17 R, situated at Village Wangdari, Taluka Shrigonda, District Ahmednagar (For short 'the suit property'). They prayed in the Suit that, the Sale Deeds of certain portion of the suit property executed by Defendant Nos.1-A to 1-H, 2 and 3 in favour of Defendant Nos.4 and 5 on 27/04/2001 and 03/05/2001 were illegal and not binding on the Plaintiffs and further prayed for perpetual injunction. In 2002, the Petitioners filed the Application for amendment of the Plaint in respect of the aforesaid Sale Deed, which was allowed. The Regular Civil Suit came to be dismissed by order dated 02/09/2013 and the Petitioners preferred the Regular Civil Appeal No.122/2019 before the District Court. The

Petitioners filed the Application below Exhibit – 66 in the said Appeal to delete the prayer clause in respect of declaration of ownership and sought amendment for directions to Defendant Nos.4 and 5 to execute Sale Deed of property by accepting the consideration under the right of pre-emption.

[II] The said Application below Exhibit – 66 was opposed by the Respondents on the grounds of delay, change of nature of the Suit and limitation.

[III] The Appellate Court, after hearing both the sides, passed the impugned order.

3. Heard the learned Advocate for the Petitioners and the learned Advocate for the Respondents. Perused the papers on the file.

4. It is submitted by the learned Advocate for the Petitioners that, during pendency of the Regular Civil Suit, the Defendants sold some property to Respondent Nos.4 and 5. In the Appeal, the Application for amendment of the Suit came to be filed. The amendment do not change the nature of the Suit. The Court cannot consider the merit of the pleadings in the amendment. The point of limitation was not material. The Petitioners are having shares in the suit property. No prejudice would cause to the Respondents. The subsequent Suit, if any, filed by the Petitioners would be hit by Order II

Rule 2 of the Code of Civil Procedure, 1908 (hereinafter referred as 'the CPC'). As per Hindu law, the Petitioners are having the right of pre-emption. The impugned order is not according to the settled position of law. There was injunction in favour of the Petitioners, which was confirmed by the Hon'ble Apex Court. The amendment be allowed by imposing some costs and the Petition be allowed. In support of his contentions, he relied on the following Judgments:

(a) Rajesh Kumar Aggarwal and Ors. Vs. K. K. Modi and Ors.; MANU/SC/8043/2006 ;

(b) Baldev Singh and Ors. Vs. Manohar Singh and Ors.; MANU/SC/3519/2006 ;

5. It is submitted by the learned Advocate for the Respondents that, the Suit was dismissed after full fledged trial. The amendment Application was filed in the Appeal and the learned Appellate Court has rightly rejected the same. Two different reliefs are tried to be inserted by way of the amendment in the nature of challenging the Sale Deeds and pre-emption, which cannot go together. The proposed amendment changes the nature of the Suit. The Petitioner was having knowledge about the Sale Deeds way back in 2001, when he amended the Plaint in 2002. The proposed amendment ought to have been done at that very point of time when the first amendment was made. The provision of Order VI Rule 17 of the CPC bars such amendment. The Judgments cited by the learned

Advocate for the Petitioners are not applicable in the present facts of the case. The time barred claims cannot be allowed and the Petition be dismissed. In support of his submissions, he relied on the following Judgments:

- (a) **South Konkan Distilleries and Another Vs. Prabhakar Gajanan Naik and Othes; (2008) 14 SCC 632;**
- (b) **Ashutosh Chaturvedi Vs. Prano Devi Alias Parani Devi and Others; (2008) 15 SCC 610 ;**
- (c) **Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Others ; (2009) 10 SCC 84 ;**

6. There is no dispute that, the Application below Exhibit – 66 was preferred in the Appeal seeking amendment to the Plaint under Order VI Rule 17 of the CPC, which reads as under :

“17. Amendment of pleadings - The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties :

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

6.1. The above-referred Judgments cited by both the sides are in respect of the principles or the settled legal position in respect of the amendment of pleadings. Perusal of the impugned order shows that, the Appellate Court considered all the aspects or factors which requires consideration while dealing with the Application for amendment. The impugned order notes that, the Application for amendment was moved after 23 years from filing of the Suit and 10 years from filing of the Appeal. It further notes that, the Petitioners had amended the Plaint during the pendency of the Suit in 2002 and inserted the pleadings in respect of the two Sale Deeds executed by Defendant Nos.1 to 3 in favour of Defendant Nos.4 and 5 and sought declaration that, the Sale Deeds were illegal and not binding on him. It further notes that, at that point of time, the Petitioners could have sought the present amendment based on the exercise of right of pre-emption. It further notes that, the proviso of Order VI Rule 17 of the CPC provides that, the Application for amendment shall not be allowed after trial commences unless the Court comes to the conclusion that, in spite of due diligence, the party could not have raised the matter of amendment before commencement of the trial. It further notes that, the proposed amendment do not disclose any ground to satisfy the Court, what efforts were taken by the Appellant to show their due diligence despite which they could not file amendment Application prior to commencement of the trial of the Suit. The

Appellate Court found the ground raised by the Petitioners in the amendment Application that, they had to rush to the Hon'ble High Court and Hon'ble Supreme Court, as not acceptable and records the finding that, in absence of such ground for satisfaction of the Court to remove the bar as per proviso to Order VI Rule 17 of the CPC, the Application could not be allowed. It further takes into consideration Article 97 of the Limitation Act, which provides for limitation of one year for seeking the relief based on right of pre-emption and the Petitioners were seeking amendment to insert the relief based on the right of pre-emption after approximately 20 years from expiry of the period of limitation and therefore, the amendment could not be allowed. It further notes that, in absence of the amendment in the pleadings and only amendment to insert the relief of directions would be a futile exercise. It further notes that, as the Application was not filed within limitation, the right accrued to the Respondents will be affected and cause legal injury to the right accrued to the Defendant Nos.4 and 5, if the amendment was allowed.

7. There is no dispute in respect of the reliefs sought in the Plaint at the time of its institution. Further, there is no dispute that, during pendency of the Suit, some amendment by adding the Defendant Nos.4 and 5 and seeking relief of cancellation of Sale Deed came to be made. Thereafter, in the Appeal, the present amendment

Application seeking relief in the nature of pre-emption is filed. Examining the impugned order, in the light of legal position enumerated in the above referred Judgments, the same is passed after taking into consideration all the relevant aspects, which are required to be taken into consideration while dealing with the Application for amendment of pleadings. The observations and the findings recorded by the learned Appellate Court in the impugned order are in consonance with the principles reiterated in the above-referred Judgments. The learned Appellate Court has considered all the aspects of the Application and rejected the Application. The findings and observations in the impugned order are based on material and in consonance with the legal position. The impugned order is based on sound reasons and calls for no interference in exercise of the power under Article 227 of the Constitution of India. Hence, the following order:

ORDER

. The Writ Petition stands dismissed.

[NEERAJ P. DHOTE, J.]