



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

WRIT PETITION NO. 4899 OF 2022

Balwant Mahadevrao Alias Mahadu Jadhav

VERSUS

Sumanbai Sadhurao Jadhav And Others

Mr. S. B. Madde, Advocate for Petitioner

Mr. Vikas Kodale a/w Prashant Gole h/f Mr. V. D. Gunale, Advocate for
Respondent Nos. 1 to 3

CORAM : R. M. JOSHI, J.

DATE : 07th April, 2025

PER COURT :-

1. By consent of both sides, heard finally at the stage of admission.
2. This petition takes exception to the order dated 04.12.2021 passed below Exhibit 102 in Special Civil Suit No. 08/2015 whereby the application filed by plaintiff-petitioner under Order VI Rule 17 to amend plaint came to be rejected.
3. There is no dispute about the fact that petitioner-plaintiff filed suit for partition and separate possession. Defendant caused appearance in the said suit and filed written statement in the year 2017. Issues were framed. Plaintiff examined himself. He was also cross examined by defendants. At this stage application for amendment to plaint is filed. By this amendment, petitioner-

plaintiff is not seeking correction to any inadvertent error committed in the pleadings. No change sought in respect of the property, the description of the property as well as boundary of the property as well as area by amendment. It is sought to be contended that the properties in question were purchased by father of plaintiff. It is however not such case of plaintiff while filing suit in Paragraph 5 of the plaint. It is specifically averred that the plaintiff and defendants are owner and in possession of the properties in question.

4. Learned counsel for petitioner submits that there would not be any change in the nature of the suit if the amendment is allowed. It is his submission that the amendment is necessary in view of the stand taken by the defendants in the written statement. To support his submissions, he placed reliance on the judgment of Hon'ble Supreme Court in case of **Abdul Rehman and another v. Mohd. Ruldu and others (2012) 11 Supreme Court Cases 341**, also on the judgment of Hon'ble Supreme Court in case of **Dinesh Goyal alias Pappu vs. Suman Agarwal (Bindal) and others 2024 SCC OnLine SC 2615** and on the judgment of Hon'ble Supreme Court in case of **Varun Pahwa vs. Renu Chaudhary (2019) 15 Supreme Court Cases 628**.

5. On the other hand, learned counsel for respondents/original defendants supported the impugned order by contending that the plaintiff is

trying to take altogether different stand than the one taken in the plaint and a new story is sought to be introduced. It is his submission by pointing out the relevant part of the impugned order that the Trial Court has rightly taken into consideration the fact that permitting of the amendment would amount to allow to make out new case which is inconsistent with previous pleadings.

6. There is no dispute about the fact that the suit is filed in the year 2015 whereas written statement came on record in the year 2017. Issues were framed. Plaintiff examined himself and his cross-examination is also over. It is thus clear that the amendment is sought after the trial has commenced. Proviso to Order VI Rule 17 mandates party to prove due diligence in case the amendment is sought after the Trial has commenced. Here, in this case, there is absolutely no explanation as to why amendment was not sought. Immediately not sought before framing of issues. Apart from this, this Court finds substance in the observations made by the learned Trial Court that the plea sought to be taken by way of amendment is not consistent with the previous pleadings. In any case, petitioner-plaintiff has specifically averred in the plaint about the property being joint family property. Thus, no prejudice would cause to the plaintiff if the amendment is not allowed.

7. In the facts and circumstances of the case and more particularly

since the plaintiff has not shown due diligence in seeking the amendment to the pleadings after commencement of the trial, the order impugned does not deserve interference. Hence, petition stands dismissed.

(R. M. JOSHI, J.)

bsj