



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5429 OF 2024

1. Jagannath Dagdu Kelkar,
Deceased through Lrs.
2. Bapusaheb @ Bapu Jagannath Kelkar,
Age: 45 years, Occu.: Agri,
Peititioner No.1 & 2 R/o : Karhetakli,
Tq. Shevgaon, Dist. : Ahmednagar.

.....PETITIONERS
(Ori. Plaintiffs)

VERSUS

1. Eknath Kisan Disale,
Age: 74 years, Occu: Agri.
2. Vasudev Eknath Disale,
Age: 39 years, Occu: Agri.
3. Sharad Eknath Disale,
Age: 36 years, Occu.: Agri.
Respondent Nos.1 to 3 R/o,
Mohamadpur, Tq., Paithan,
Sambhajinagar.
4. Ramnath Jagannat Kelkar,
Deceased Through LRs.
- 4A. Gayabai Ramnath Kelkar,
Age: 52 years, Occu.: Agri.
- 4B. Sandeep Ramnath Kelkar,
Age: 25 years, Occu: Agri.
- 4C. Nandkumar Ramnath Kelkar,
Age: 22 years, Occu: Agriculture
5. Vijay Jagannath Kelkar,
Age: 44 years, Occu: Agri.
Respondent Nos.4A to 4C and 5, R/o
Karhetakli, Tq. Shevgaon Dist. Ahmednagar

(Ori. Defendants)

.....RESPONDENTS
(Original Plaintiff Nos.2,3)

Mr. N. S. Jaju, Advocate for the Petitioner
Mr. N. D. Sevekar, Advocate for Respondents

CORAM : ROHIT W. JOSHI, J.

DATED : 01ST JULY, 2025

ORAL JUDGMENT :-

. The petitioners are original plaintiffs in Regular Civil Suit No.203 of 2015 pending on the file of learned Judge, Junior Division, Shevgaon.

2. The petitioner had filed an application for amendment of plaint on 31.07.2023, vide Exhibit 105 seeking limited relief of correction in the name of the village in which the suit property is located. According to the plaintiff, inadvertently, the name of the village was mentioned as Ghari instead of Mohamadpur.

3. The learned Counsel for the petitioners submits that the application is innocuous and does not affect rights of the original defendants in any manner whatsoever. He, therefore, contends that the learned Trial Court ought to have allowed application for amendment.

4. Per contra, learned Advocate for the respondents/defendants justifies the order. His contention is

that the correct name of the village was known to the plaintiff and therefore, the plaintiff ought to have mentioned the correct name in the plaint itself. He submits that in any case, necessary amendment application ought to have been filed before commencement of trial. His contention is that the application does not satisfy test of due diligence contemplated by proviso to Order VI, Rule 17. He therefore, contends that the petition is without any substance and is liable to be rejected. The learned Advocate also states that the suit is a simpliciter suit for injunction, the amendment is not necessary for deciding controversy between the parties. Learned Advocate places reliance on the judgment of Hon'ble Supreme Court in the matter of *Vidyabai and Ors Vs. Padmalatha and Another* reported in *2009 ALL MR (1) 471*, wherein the Hon'ble Supreme Court has held that while dealing with an application for amendment, it is primary duty of the Court to decide as to whether the amendment is necessary for adjudication of real dispute between the parties.

5. Having heard the rival submissions as aforesaid, this Court is of the opinion that the amendment sought is indeed innocuous in nature and does not adversely affect the right of

the defendant. Mentioning incorrect name of the village appears to be an inadvertent error. It is necessary to have correct description of the suit property on record. The amendment is therefore necessary in order to decide the real controversy between the parties.

6. The order rejecting the application for amendment is hyper technical and therefore unsustainable. The order dated 04.04.2024 passed by the learned 2nd Joint Civil Judge, Junior Division, Shevgaon, rejecting application for amendment of plaint filed vide Exhibit 105 in Regular Civil Suit No.203 of 2015 is therefore quashed.

7. The Writ Petition is **disposed** of accordingly.

(ROHIT W. JOSHI, J.)