



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

WRIT PETITION NO. 6388 OF 2024

Goverdhan Sitaram Patil Through Gpa Sanjay Goverdhan Patil
VERSUS
Bhagwat Narayan Patil And Others

Mr. V. D. Salunke, Advocate for Petitioner
Mr. M. B. Kolpe, Advocate for Respondent Nos. 1 to 4

CORAM : R. M. JOSHI, J.

DATE : 24th April, 2025

PER COURT :-

1. This petition takes exception to the judgment and order passed below Exhibit 49 dated 19.03.2024 in Regular Civil Suit No. 543/2017 rejecting the application filed by the petitioner-plaintiff for amendment to the plaint for injunction with specific pleadings that plaintiff's father was tenant in respect of the subject land and after his death, plaintiff continued to be tenant and in possession thereof. During the pendency of the suit, application Exhibit 49 came to be filed on 15.12.2023 with candid averment that the copy of the order passed in Tenancy Proceeding No. 14 of 1974 is received on 13.12.2023. With these averments, amendment is sought.

2. Amendment is opposed by respondents by filing reply.

3. Learned counsel for the petitioner submits that in fact before this Court in Writ Petition No. 14728/2019, reference of this order was made however, since the order was not there on record, this Court has not taken cognizance thereof. Copy of the order passed in Tenancy Proceeding No. 14/1974 came to be received by petitioner-plaintiff and thereafter application for amendment is moved. It is his submission that in such circumstances, application filed immediately within 2 days, cannot be called as delayed one. According to him, since there is already material averment in the plaint about petitioner being tenant of the subject land, question of change in the nature of suit by this amendment does not arise.

4. Learned counsel for respondents supported the impugned order. According to him, the application for amendment is filed after commencement of trial and hence, rightly rejected by the Trial Court. It is his further submission that the petitioner denying the copy of the order passed in Tenancy Proceeding No. 14/1974 much prior to the filing of the application. In this regard a specific query was raised to the learned counsel for the respondents as to whether any such plea was raised before the Trial Court. Perusal of the reply filed by Respondent No. 2 does not indicate so.

5. There cannot be dispute about the proposition of the law that the

party is required to show due diligence if the amendment to the pleadings is sought after the commencement of Trial in view of proviso to Order VI Rule 17. Perusal of the application itself indicates that the document on the basis of which amendment is sought is received on 13.12.2023, there was nothing on record to indicate otherwise. The amendment sought is on the basis of event occurred subsequent to the commencement of trial. This contention of the petitioner is further supported by the orders passed by this Court on 07.09.2023 and 20.09.2024 in Writ Petition No. 14728/2019.

6. In so far as the nature of amendment is concerned, plaintiff has already pleaded in no uncertain terms that his father was tenant in respect of the subject land and after his death, plaintiff continued to be tenant and in possession thereof. Thus, by allowing amendment, the nature of suit is not likely to be changed.

7. This Court also finds no substance in the contention of the learned counsel for respondents that the amendment is permitted, it will give an opportunity to the plaintiff to make an application before the Trial Court for referring the dispute in respect of tenancy before the Competent Authority. If there was no pleading in the plaint with regard to the tenancy of the plaintiff in respect of the suit land, such objection would hold water. However since at the

time of filing of the suit itself, it is claimed by the plaintiff that he is tenant of the suit property, this Court finds no merit in the said objection.

8. As a result of above discussion, impugned order cannot sustain. Hence, set aside. Application Exhibit 49 stands allowed.

(R. M. JOSHI, J.)

bsj