



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7428 OF 2022

Bhimrao Balabhau Chavan And Others

VERSUS

Laxman Hiram Chavan Deceased Through Lrs Sudamati
Laxman Chavan And Others

- Mr. G. K. Naik Thigle, Advocate for the Petitioners
- Mr. M. U. Shelke, Advocate for the Respondents

CORAM : R. M. JOSHI, J
DATE : SEPTEMBER 22, 2025

PER COURT :

1. By consent of both sides, heard finally at the stage of admission.

2. This Petition takes exception to the order passed below Exh. 145 in RCS No. 266/2006 whereby Application filed by the Petitioner/Plaintiff under Order VI, Rule 17 of Code of Civil Procedure for amendment of the plaint and inclusion of property bearing Survey No. 1-A & 2-A and further seeking possession thereof came to be rejected.

3. Petitioner is Plaintiff in RCS No. 266/2006. Admittedly, he filed suit seeking declaration of Survey Nos. 1-A and 2-A. Further admittedly Survey No. 2/AA

was subject matter of previous suit i.e., RCS No. 198/1980. This suit came to be decreed. Against which, Appeal bearing RCA No. 71/1985 was filed before the District Court. Said appeal came to be allowed with dismissal of the suit. There was a challenge to the said judgment and decree in Second Appeal No. 511/1991, which stood abated.

4. Petitioner/Plaintiff moved application Exh. 145 claiming that the right of the Plaintiff in respect of Survey No. 1-A & 2/AA has been proved in the earlier proceedings i.e., previous suit against which Second Appeal No. 511/1991 was dismissed by this Court. It is further claimed that during the intervening period Defendants have dispossessed the Plaintiff from Survey No. 2/AA and, therefore, amendment is sought seeking possession of Survey No. 2/AA.

5. This Application was opposed by Defendants. The said opposition is was accepted by Trial Court by passing impugned order. Hence, this Petition.

6. Learned Counsel for the Petitioner submits that the rights in the properties bearing Survey Nos.

2, 2-A & 2/AA flows from inheritance of the respective parties. It is his submission that no independent right could be claimed by the parties in respect of all three properties. According to him, since the property bearing Survey No. 2/AA was subject matter in RCS no. 198/1980 and the Appeal arising out of the said judgment and decree passed therein is dismissed, the Petitioner/Plaintiff was remediless for the restoration of the possession of Survey No. 2/AA obtained unauthorizedly by the Defendants. It is his submission that in order to avoid multiplicity of the proceedings, it was necessary for the Trial Court to permit the amendment of the plaint. To support his submissions, he placed reliance on following judgment: State of West Bengal and Others vs. Pam Developments Private Limited and Another, (2025) 3 SCC 356, Bharat Petroleum Corporation Ltd vs. Precious Finance Investment Pvt. Ltd, 2007 (1) Mh.L.J. 331, Balkrishna vs. Kusum Vishnudas Baheti and Ors, MANU/MH/2013/2021 & Pradeep vs. Digambar, MANU/MH/1010/2022. It is his contention by referring to the judgment of the Hon'ble Supreme Court in case of BPCL (supra) that where it is permissible for Plaintiff to file independent suit, the

same relief which could be prayed for in a new suit should be permitted to be incorporated in the pending suit by way of an amendment, which according to him, would avoid multiplicity of legal proceedings.

7. Learned Counsel for Respondent/Original Defendants opposes the said contention by pointing out the fact that the property Survey nos. 2/AA was never subject matter of the suit of RCS No. 266/2006. It is his contention that the Trial Court has rightly taken into consideration the fact that the amendment would change the nature of scope and nature of suit, which is impermissible in law.

8. No doubt, there is long history of litigation between the parties, which could be traced back to year 1956 when the first suit was filed between them. However, admittedly, RCS No. 198/1980 was filed in respect of Survey No. 2/AA. Though there are certain pleadings in the written statement taken by Defendants therein in respect of Survey no. 1-A and 2-A, these properties were never subject matter of decision before the Trial Court. Conversely, Survey No. 1-A and 2-A are the subject properties in the present suit. Even if it

is accepted for the sake of argument that rights of the properties have flown from the inheritance and that there could not be any different stand permitted to be taken by the parties, as a matter of fact Survey No. 2/AA was never subject matter of the present suit.

9. It is inconvincible to accept the contention of the learned Counsel for the Petitioner that in view of the pendency of the earlier proceedings, the Petitioner/Plaintiff was remediless when he lost possession of Survey No. 2/AA to the Defendants. If any cause of action arose for the Petitioner/Plaintiff in respect of properties, which is not subject matter of the present suit, it was open for the Plaintiff to take out appropriate proceedings for regaining possession thereof in accordance with law.

10. Though there cannot be any dispute made with regard to the proposition sought to be canvassed by the learned Counsel for the Petitioner relying upon the judgment in case of BPCL (supra), however, only in the situation wherein the amendment is sought in respect of the subject matter of the suit, instead of calling upon the party to file a new suit, the present suit could be

allowed to be amended in order to avoid multiplicity of the proceedings. For example, suit is filed for injunction in respect of a particular property and during pendency of suit, dispossession of Plaintiff is caused, in such case it would be appropriate to allow amendment. This principle, however, would not be applicable in case where subject property is not subject matter of the suit. Thus, permitting Plaintiff to incorporate any pleadings in respect of Survey No. 2/AA would not only enlarge the scope of the suit but also the nature of the suit is going to be changed, which is impermissible in law.

11. Having regard to the above position of law as well as factual aspects of the matter, this Court finds no perversity in the impugned order passed by the Trial Court rejecting application for amendment. Hence, Petition stands dismissed.

12. Needless to say that dismissal of the Petition would not come in way of the Plaintiff to avail appropriate remedy in respect of Survey No. 2/AA in accordance with law.

(R. M. JOSHI, J.)