



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

12 WRIT PETITION NO. 9467 OF 2025

Shivaji Nivrutti Jejurkar And Others
VERSUS
Ramesh Raosaheb Pathare And Others

...
Advocate for Petitioners : Mr. L.B. Palod

...

CORAM : S. G. CHAPALGAONKAR, J.

Dated : August 04, 2025

PER COURT :-

1. Heard Mr. Palod, learned advocate appearing for the petitioners.

2. Mr. Pallod, submits that petitioners are original plaintiffs. They instituted Special Civil Suit No.19 of 2015 before learned Civil Judge S.D. at Shrirampur seeking decree of declaration that sale deed nos.184 and 185 dated 28.1.2010 and sale-deed nos.3791 and 3792 of 2010 are illegal, invalid and not binding on right of plaintiffs. Plaintiffs had sought consequential relief of injunction against defendants. Mr. Palod submits that due to old age of plaintiffs, they could not aver as to existence of the written agreement to repatriate suit property in favour of defendants. However, lateron they could found notarized agreement in that behalf, therefore, moved an application

seeking permission to amend the plaint, which has been rejected by the Trial Court. Mr. Palod invites attention of this Court to the original pleadings in the suit, whereby plaintiffs have made reference to oral agreement to repatriate the suit property. He would therefore, urge that, if amendment is allowed, there would be no change in the nature of suit and reliefs claimed. Such an amendment ought to have been allowed.

3. Having considered submissions advanced, it can be observed that plaintiffs have specifically pleaded in plaint regarding oral agreement to repatriate suit land in favour of the defendants. It was their contention that, although defendants had agreed to repatriate the suit land, they have never executed document in this regards. Now by way of application below Exhibit-38, amendment is sought to bring on record so-called notarized written agreement executed by defendants to repatriate the suit property in favour of plaintiffs. Apparently, such contention is contrary to original pleadings in the plaint. The learned Trial Court has rightly observed that plaintiffs seeks to bring on record inconsistent pleadings as to existence of written agreement to repatriate the land.

4. Apparently, application for amendment is filed at stage when evidence of plaintiffs witnesses was already recorded in suit. There is no explanation on behalf of plaintiffs as to why application for amendment was not brought before commencement of trial. Learned Trial Court has rightly observed that plaintiffs have earlier exhausted remedy of amendment in plaint at two occasions, but it was never contention of plaintiffs that there was existence of any written contract as sought to be introduced by proposed amendment.

5. In that view of the matter, considering proviso to Order VI Rule 17 of the Civil Procedure Code, in absence of plausible explanation for bringing amendment after commencement of trial, there was no occasion to allow the application at such a belated stage. In that view of the matter, view taken by the Trial Court appears to be in tune with the legal position as it exists.

6. In the result, there is no merit in the writ petition. Writ petition stands **rejected**.

(S. G. CHAPALGAONKAR)
Judge

...