



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

86 WRIT PETITION NO. 9670 OF 2024

1. Shantabai Jorsingh Dhabe
Age 54 yrs. Occ. Household
2. Jorsingh Rama Dhabe
Age 57 yrs. Occ. Business
Both r/o Bilpudi, Nisal Faliya,
Desai Residency, Dharampur,
Tq. Dharampur, Dist. Balsad (Gujrat) ...Petitioners.

VERSUS

1. Dhansingh Chainu Jadhav
Age 62 yrs. Occ. Labour,
2. Abesingh Chainu Jadhav
Age 52 yrs. Occ. Labour
3. Subhash Chainu Jadhav
Age 50 yrs. Occ. Labour
All at present r/o Wangan,
Post. Bhawandagad, Tq. Ahava
Dist. Dang (Gujrat) ...Respondents

...
Mr. Vinod P. Patil, Advocate for the Petitioners
Mr. Sandip R. Sapkal, Advocate for Respondent Nos.1 to 3.
...

CORAM : ROHIT W. JOSHI, J.
DATE : 18th AUGUST, 2025

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.
2. The present petitioners are defendants in Regular Civil Suit No.14 of 2022 filed by the present respondents seeking relief of

cancellation of sale deed dated 08.09.1998 with respect to suit property which is an agricultural land. After filing of the written statement issues were framed. At the stage when the suit was posted for evidence, the plaintiffs filed an application for amendment of plaint vide Exhibit-13 claiming that the defendants had forcibly taken possession of the suit property in the month of March 2023.

3. This application for amendment of plaint dated 27.04.2023 filed vide Exhibit-13 came to be allowed by the learned Trial Court vide order dated 16.12.2023. The defendants have filed the present petition challenging the said order.

4. The suit was filed for challenging sale deed with respect to the suit property. The plaintiffs claimed to be in possession of the suit property and also sought a decree for perpetual injunction restraining the defendants from disturbing their possession over the suit property. In this suit the plaintiffs filed application for amendment of plaint contending that while the suit was pending the defendants took forcible possession of the property in the month of March 2023. The learned Trial Court has allowed the said application for amendment thereby permitting the plaintiffs to incorporate appropriate pleading in the plaint with respect to alleged act of taking forcible possession and also permitting plaintiff to incorporate a prayer for delivery of possession.

5. The learned Advocate for the petitioner/org.defendants contends that the sale deed is executed in their favour on 08.09.1998 and since then the defendants are in possession of the suit property. He contends that the suit is filed after a period of around 23 and half years and in this suit an application for recovery of possession is incorporated by introducing a fictitious cause of action. He further contends that the application is filed at a belated stage with a view to delay further progress of the suit.

6. The learned Advocate for the respondents/ orig.plaintiffs supports order contending that correctness or otherwise of the averments sought to be incorporated by way of amendment cannot be decided while dealing with an application for amendment.

7. Having heard the rival submissions as aforesaid and having perused the application for amendment along with the plaint averments as also the order impugned, I am satisfied that there is no reason to interfere with the impugned order. It is well settled that correctness of pleadings sought to be incorporated in the plaint by way of amendment cannot be adjudicated while dealing with an application for amendment. Merely because of plaintiffs claimed dispossession, that by itself will not mean that the case of dispossession is accepted by permitting the plaintiffs to amend the plaint. The first contention made

by the learned Counsel for the petitioner is with respect to merits of the matter which cannot be dealt with while dealing with an application for amendment. As regards the question of delay, it appears from the application for amendment that according to the plaintiffs they were dispossessed from the suit property in the month of March 2023 and the application for amendment is filed on 27.04.2023. Going by the version of the plaintiffs the fact of dispossession appears to be a subsequent development which has taken place after filing of the suit.

8. In view of the aforesaid, the second contention is also liable to be rejected.

9. Writ Petition is accordingly **dismissed** with no order as to costs.

[ROHIT W. JOSHI J.]