



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9435 OF 2015

1. Devidas Ragho Chavan
Age: 61 years, Occu.: Agri.,
2. Rakesh Devidas Chavan
Age: 41 years, Occu.: Agri.,
3. Mukesh Devidas Chavan
Age: 36 years, Occu.: Agri.,

All R/o Dattane, Tq. Shindkheda,
Dist. Dhule

..PETITIONERS

VERSUS

Sudhakar Ragho Chavan
Age: 60 years, Occu.: Agri.,
R/o Dattane, Tq. Shindkheda,
Dist. Dhule

..RESPONDENT

....
Mr. A.S. Sawant, Advocate for petitioners
Mr. S.P. Shah, Advocate for the respondent
....

CORAM : ABHAY J. MANTRI, J.
DATE : 13th NOVEMBER, 2025

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel for both parties for final disposal.
2. The petitioners / original defendants, being aggrieved by the order dated 13th January, 2015, passed by learned Joint C.J.J.D., Shindkheda

(hereinafter referred to as '*trial Court*') below Exhibit 28 in R.C.S. No. 35 of 2014, whereby their application for permitting them to amend the written statement came to be rejected, have preferred this petition.

3. At the outset, learned counsel for the petitioners contends that prior to the commencement of the trial, the petitioners had made an application for carrying out an amendment in the written statement. The application was rejected. Learned counsel has pointed out paragraph no.6 of the impugned order and submitted that despite the observations made therein, the learned trial Court has erred in rejecting the application as the said amendment appears inconsistent with the defence taken in the written statement. In fact, as per the observations in paragraph no. 6, the learned trial Court ought to have allowed the application for amendment as the trial was yet to commence, and therefore, he urged for allowing the petition.

4. *Per contra*, learned counsel for the respondent strenuously opposed the petition on the ground that the amendment sought by the petitioners is inconsistent with their defence raised in the written statement. Additionally, by the said amendment, the petitioners want to withdraw their admission as given in paragraphs 2 and 3 of the written statement, which is not permissible. As such, he submitted that the impugned order passed by the learned trial Court is just and proper and no interference is required in it.

5. Having heard the rival submissions and gone through the impugned order and record, at the outset, it appears that the

petitioners/defendants have moved an application for permitting them to amend the written statement prior to the commencement of the trial. It is a settled position of law that prior to commencement of trial, the Court ought usually to be allowed all the amendments, unless the same would cause prejudice to the rights of the parties.

6. On perusal of the record, it appears that the respondent/plaintiff has filed the suit for a simpliciter injunction, wherein the petitioners/defendants appeared and denied the contents of the plaint in toto. I have also perused paragraph nos. 2 and 3 of the written statements which indicates that the petitioners have categorically averred that the contents of paragraph nos. 2 and 3 are false and mentioned those contents below that, and therefore, in my view, it cannot be said that the contents mentioned below the averments are the admission given by the defendants as argued by learned counsel for the respondent, and therefore, I do not find substance in his contention in that regard.

7. Apart from that, by filing the said application, the petitioners/defendants were trying to insert paragraph no.9, as mentioned in the application (pg. no.19), whereby they want to incorporate the fact that ‘in the year 1992, a memorandum of understanding was executed between the parties and accordingly all the parties are in the possession of their respective shares’ and the said amendment does not indicate that the petitioners/defendants want to withdraw their admission given in the written

statement. On the contrary, they want to incorporate it to claim possession of the disputed land.

8. Moreover, the suit is filed for a simplicitor injunction only. Therefore, the parties must demonstrate their possession of the disputed property. As such, in my view, the proposed amendment as sought is necessary to determine the real question in controversy between the parties regarding who is in possession of the disputed land and to avoid the multiplicity of proceedings. Furthermore, if the amendment is allowed, it would not prejudice the plaintiff's rights.

9. Having considered the above discussion and mandate under Order VI Rule 17 of the Code of Civil Procedure, I find substance in the contention of the petitioners to permit them to amend the written statement, as it is a settled position of law that the court has to be liberal in permitting the amendment unless a serious prejudice would be caused to the other side. Similarly, it is a settled position of law that defendants can take various pleas in their written statement. Moreover, the trial was yet to be commenced, as well as the proposed amendment will not change the nature of the defence therefore, it appears that the order passed by the learned trial Court is contrary to the settled position of law, as well as the learned Judge has erred in observing that the proposed amendment which the petitioners have sought is inconsistent with the defence in the written statement, and therefore, was rejected. Consequently, it appears that the learned trial court has erred in not

allowing the application for amendment. The findings recorded by the learned trial court are improper and, therefore, liable to be set aside in the writ jurisdiction. Accordingly, interference is required in it.

10. As a result, the writ petition is allowed. The impugned order dated 13th January, 2015, passed by learned Joint C.J.J.D., Shindkheda, below Exhibit 28 in R.C.S. No. 35 of 2014, is hereby quashed and set aside. The application Exhibit 28 is allowed as prayed. The petitioners are directed to carry out the amendment within two weeks from the receipt of a copy of this order by the learned trial Court and serve a copy of the amended written statement to the plaintiff within one week thereafter, failing which this order shall stand vacated without further reference to the Court.

11. The learned counsel for the respondent has pointed out that the plaintiff has filed an affidavit of evidence before the learned Magistrate. In such circumstances, the plaintiff is at liberty to adduce additional evidence, if any, pursuant to the said amendment. Inform the order to the learned trial Court. The rule is made absolute. No order as to costs.

(ABHAY J. MANTRI, J.)

SSD