



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10413 OF 2024

Shri. Wamanrao S/o Rukhmaji Halde,
Age : 69 years, Occ. : Agriculture,
R/o. Behind the Office of
Superintendent of Police, Vajirabad,
Nanded, District Nanded.

... PETITIONER
(Ori. Plaintiff)

VERSUS

- 1] Mohammad Abdul Hafiz S/o. Abdul Jabbar,
Age : 62 years, Occ. : Plotting and Business,
- 2] Mohammad Abdul Jafar S/o. Abdul Hafij,
Age : 40 years, Occ. : Plotting and Business,

Both R/o Mill Chaal,
Near the house of Shri. Venkatrao Dange,
Opposite water tank, Khandakpura,
Nanded, Dist. Nanded

- 3] The State of Maharashtra,
Through the District Collector,
Nanded, Dist. Nanded.

... RESPONDENTS
(Ori. Defendants)

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- Mr. Mukhedkar Amit Arunkumar, Advocate for the Petitioner
 - Mr. B. B. Bhise, AGP for Respondent No. 3 – State
 - Mr. U. B. Bilolikar, Advocate for Respondent Nos. 1 and 2
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CORAM : ROHIT W. JOSHI, J.

DATE : AUGUST 06, 2025

ORAL JUDGMENT:

1. Reply dated 17.03.2025 filed by the respondents is taken on record. The petitioner who is the original plaintiff had filed Regular Civil

Suit No. 79 of 2018 seeking perpetual injunction against the defendants for restraining them from disturbing his possession over the suit property, which comprises of an agricultural land. The plaintiff and defendants are owners of adjoining agricultural lands.

2. In the said suit, an application for appointment of court commissioner, for measurement of properties was appointed vide order dated 18.09.2018. It is the case of the plaintiff that after the measurement was carried out by the court commissioner, the defendants have taken possession of around 18-20 gunthas of land belonging to him. It is stated that this possession was taken on 11.02.2023.

3. On this basis, an application for amendment is filed by the plaintiff in order to incorporate a prayer for declaration of ownership and possession. This application dated 06.01.2024 filed at 'Exhibit 77', came to be rejected by the learned Trial Court vide order dated 24.07.2024. This order is subject matter of challenge in the present petition.

4. Perusal of the order will demonstrate that the learned Trial Court has observed that the plaintiff did not file any documents to show that defendants have taken possession of 18-20 Gunthas of land, as alleged by the plaintiff. It is further observed that the possession is

allegedly taken on 11.02.2023 and the application for amendment is moved on 06.01.2024 without getting any fresh measurement. It is also observed that the nature of the suit will be altered, if the amendment is allowed.

5. Perusal of the plaint will demonstrate that according to the plaintiff, he was in possession of the suit property as owner. It is his contention that after filing of the suit, the defendants have taken possession of around 18-20 gunthas of land from him.

6. Correctness or otherwise of the averments cannot be looked into, while dealing with an application for amendment of plaint. Likewise, non-filing of documents in order to establish possession also cannot be a ground for rejecting the amendment. The nature of suit will also not change, inasmuch as the plaintiff originally claimed to be in possession of the suit property and sought relief of injunction, and now it is his contention that the defendants have illegally taken possession of some part of the suit property, possession whereof needs to be restored. In the considered opinion of this Court, that will not change the nature of the suit, but only the relief will be altered in view of alleged subsequent development. Having regard to the reasons recorded by the learned Trial Court, in the considered opinion of this Court, the

impugned order is not sustainable and is liable to be quashed and set aside.

7. The writ petition is **allowed** in the following terms :

(a) Order dated 24.07.2024 passed by the learned 2nd Jt. Civil Judge (Sr. Dn.), Nanded on application at 'Exhibit 77' in Regular Civil Suit No. 79 of 2018 is quashed and set aside and the said application is allowed.

[ROHIT W. JOSHI, J.]