



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10195 OF 2025

Sunil Waman Kulkarni And Another
VERSUS
Murlidhar Dattatray Kulkarni And Others

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Advocate for the Petitioners : Mr. A.S. Kulkarni

CORAM : S. G. CHAPALGAONKAR, J.

Dated : August 14, 2025

PER COURT :-

1. Present writ petition takes exception to order dated 30.07.2025 passed by Joint Civil Judge Junior Division, Paithan, below Exhibit 163 in R.C.S. No.15 of 2000, by which the application seeking amendment in the plaint is allowed.

2. Petitioners are original defendant nos. 2 and 3 in R.C.S No.15 of 2000 pending before the learned Civil Judge Junior Division, Paithan. The suit is instituted seeking the relief of declaration and ownership and perpetual injunction based on the will. Defendants have filed written statement and raised claim of their ownership. The issues were framed. The trial was commenced. Plaintiff stepped into witness box, and he was cross examined.

3. At this stage, the application seeking amendment in the plaint is filed below Exhibit-163 specifically to bring corrected date of execution of the will, which has been wrongly mentioned as 12.07.1993 instead of 12.07.1992. It was the contention of the plaintiff that a typographical error occurred while putting the date of execution of the will. The aforesaid application was opposed on behalf of the defendant, firstly on the ground that it is filed at the belated stage, particularly, after commencement of the trial. Secondly, no explanation is provided to satisfy requirement of due diligence. The learned Trial Court allowed the application by imposing the costs of Rs.20,000/- against the plaintiff. In this back ground, present writ petition is filed.

4. Mr. Kulkarni, learned advocate appearing for the petitioners takes exception to impugned order contending that amendment is permitted de hors proviso to Order VI Rule 17 of Civil Procedure Code, which prohibits permitting any amendment after commencement of trial. According to him, the mistake in putting date of execution of will cannot be termed as typographical error. In support of his contentions, he relies upon judgment of Hon'ble Supreme Court in case of

J. Samuel and Others Vs. Gattu Mahesh and Others reported in 2012 AIR (SCW) 1035. Mr. Kulkarni further raised grievance that, although, suit is prolonged due to plaintiff, directions are given by Trial Court that defendant shall produce his witness list and conclude his evidence within a period of two months. According to Mr. Kulkarni, this will cause serious prejudice to the rights of defendants to lead evidence and bring on record his defence due to time limit prescribed by Trial Court.

5. Having considered submissions advanced, it can be observed that plaintiff has mentioned date of execution of will as '12.07.1993' in the pleadings. Even in evidence affidavit, same date is mentioned. Later-on, when evidence of defendant was to be started, present application is moved seeking amendment for correction of date. It can be observed that there is only mistake of last digit regarding year. Instead of 1992, the year of execution is mentioned as 1993. The month and date is proper. This can be a typographical error. It is rightly observed by the Trial Court that the dispute in suit is regarding execution of will. There is no specific dispute as regards to date of execution of will as appearing on the documents itself.

6. In this background, if the Trial Court finds that such typographical error needs correction for effective adjudication of dispute, amendment can be granted. Pertinently, to address the issue of inconvenience caused to defendants, appropriate cost of Rs.20,000/- is imposed on plaintiffs. Hence, no fault can be found in order allowing the amendment. Although, Mr. Kulkarni relies upon the judgment of Hon'ble Supreme Court in the case of **J. Samuel** (supra), that will not apply in facts of present case.

7. Second aspect canvassed by Mr. Kulkarni is that, petitioners are put on a guard of time limit of two only months to conclude evidence. It appears that suit is 25 years old and, therefore, the Trial Court is making endeavour to expeditiously dispose of the suit, eventually, directions to conclude evidence prescribing time limit are given. However, it can be observed here that defendants must get a fair opportunity to lead his evidence and directions to complete the evidence within a period Two (2) months shall not be treated as mandatory. If the circumstances preclude, the defendants to complete the evidence within specific time, Trial Court would ensure that

defendants get fair and sufficient opportunity to bring his defence on record without making unnecessary haste.

8. With these observations, writ petition stands **dismissed.**

(S. G. CHAPALGAONKAR)
Judge

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