



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

928 WRIT PETITION NO. 10375 OF 2025

VIMAL RAJENDRA SHINDE

VERSUS

SANTOSH BABAN NALE

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Advocate for the Petitioner : Mr. Rode Dilip B.

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CORAM : ARUN R. PEDNEKER, J.

Dated : August 20, 2025

PER COURT :-

1. Heard the learned counsel for the petitioner.
2. By way of present writ petition, the petitioner/plaintiff challenges the order dated 27.6.2025 passed below Exh. 47 by the learned 2nd Jt. Civil Judge, Senior Division, Shrigonda by which the application filed by defendant under Order 6, Rule 17 of C.P.C. for amendment in written statement is allowed.
3. The learned counsel for the petitioner submits that the defendant has not shown due diligence and that he ought to have carried out the amendment at earlier stage. He submits that the suit is at the stage of framing additional issue and evidence of plaintiff is already filed and it is listed for cross examination. The learned counsel submits that the amendment would change the defence of defendant and additional defences would be available to the defendant and this would protract the trial and therefore, the application filed for amendment ought not have been granted.
4. Having perused the application, Exh. 47, it appears that the defendant wanted to add following paragraph in the written statement,

which is as under :-

"६अ) "वादीच्या दाखल दाव्यातील तथाकथित खरेदीपावती व त्यातून दाखल दाव्यात मागितलेली दाद पहाता त्यातून वादीचा 'कृषक मिळकतीचा' (Agricultural Land) विनापरवाना 'अकृषक कारणासाठी' मिळकत मिळविण्याचा व उपयोगात आणण्याचा बेकायदा उद्देश स्पष्टपणे दिसून येतो. सदर बाब सार्वजनिक तत्व व हित (Public Policy) तसेच करार कायदा १८७२ (Contract Act (9 of 1972)) मधील कलम २३ मधील तरतुदीविरुद्ध होती व आहे. सदर बाब मुळतःच चुकीची व बेकायदा असल्यामुळे वादी सदरबाबत दाव्यात मागणी केल्याप्रमाणे दाद मागण्यास अथवा मिळण्यास पात्र नाही. नमुद कारणातूनही वादीचा दाखल दावा रद्द व्हावा / करावा."

5. By the above amendment, the defendant in para 6A of the written statement would plead that :-

"Upon examining the alleged sale receipt submitted by the plaintiff and the relief sought in the plaint based thereon, it is evident that the plaintiff intended to acquire and utilize agricultural land for non-agricultural purposes without obtaining the requisite permission. Such intent is clearly unlawful. This matter is contrary to public policy and interest and also violates the provisions of Section 23 of the Indian Contract Act, 1872. As the transaction is inherently illegal and void, the plaintiff is not entitled to claim or receive any relief as prayed for in the suit. On these grounds as well, the suit filed by the plaintiff deserves to be dismissed."

6. The trial court has allowed the proposed amendment as it will not cause any prejudice to the plaintiff. The amendment is an additional defence taken by the defendant that the agreement relied upon by the plaintiff is unlawful and not enforceable in view of section 23 of Contract Act. Amendment to written statement does not create prejudice to the plaintiff as an amendment to the plaint unless the admission made in written statement is sought to be withdrawn by an amendment. The law on amendment to pleadings under Order VI, R. 17 of C.P.C. has been crystallised in the case of **Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited** reported in **AIR 2022 SC 4256** and considering the law laid therein the amendment is rightly allowed by the Trial Court.

Considering this aspect of the matter, the trial Court has rightly allowed the application. In view of the above, no case is made out for interference in the impugned order. The writ petition is dismissed.

(ARUN R. PEDNEKER, J.)

ssc/