



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

15 WRIT PETITION NO. 11252 OF 2025

PANDURANG APPARAO DHAKARGE AND OTHERS
VERSUS
RAVIAJ ASHOKRAO DESHMUKH

...
Advocate for the Petitioner : Mr. Prashant Prabhakar Giri
Advocate for Respondents : Mr. Mahesh S. Deshmukh

...
CORAM : ARUN R. PEDNEKER, J.

Dated : September 22, 2025

PER COURT :-

1. Heard the learned counsel for the parties.
2. By way of present writ petition, the petitioners challenge the impugned order dated 14.7.2025 passed below Exh. 92 in R.C.S. No. 19/2021 by the learned 2nd Jt. C.J.J.D., Parbhani by which the application filed by the plaintiff/respondent for amendment to the plaint is allowed under Order VI, Rule 17 of the C.P.C.
3. It appears that the plaintiff filed simplicitor suit for temporary injunction. In pursuance of the defence raised, claiming title over the suit property by the defendants/petitioner, the plaintiff was constrained to amend the plaint and include the prayer of declaration so as to remove the cloud over the title of property. Considering the defence raised in the written statement, the trial court has allowed the application filed for amendment in plaint.
4. The learned counsel for the petitioners submits that the amendment ought not to have been allowed at the later stage when earlier there was prayer for simplicitor temporary injunction.
5. This issue is squarely covered by the judgment of the Hon'ble

Supreme Court in the case of **Anathula Sudhakar Vs. P. Buchi Reddy (Dead)** by L.Rs. And others reported in (2008) 4 SCC 594, where in para 14 of the judgment the Hon'ble Supreme Court has observed as under:-

"14. We may, however, clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to the plaintiff's title raises a cloud on the title of plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown. An action for declaration, is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient. Where the plaintiff, believing that defendant is only a trespasser or a wrongful claimant without title, files a mere suit for injunction, and in such a suit, the defendant discloses in his defence the details of the right or title claimed by him, which raises a serious dispute or cloud over plaintiff's title, then there is a need for the plaintiff, to amend the plaint and convert the suit into one for declaration. Alternatively, he may withdraw the suit for bare injunction, with permission of the court to file a comprehensive suit for declaration and injunction. He may file the suit for declaration with consequential relief, even after the suit for injunction is dismissed, where the suit raised only the issue of possession and not any issue of title."

6. The Hon'ble Supreme Court in the case of **Anathula** (supra) has held

that if the defendant/W.S. discloses in his defence details of right or title over the suit property, then there is a need for the plaintiff to amend the plaint and convert the suit into one for declaration.

7. The learned counsel for the petitioner also submits that there would be issue of limitation involved. As regards the same, it can be said that if such issue of limitation is raised or it does arise, the trial Court will deal with the same in accordance with the law.

8. Considering the above discussion, I hold that nothing survives in the writ petition. I see no reason to interfere in the impugned order. The writ petition is dismissed accordingly.

(ARUN R. PEDNEKER, J.)

ssc/