

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

905 WRIT PETITION NO. 13784 OF 2024

1. Vikram s/o. Nivrutti Dhakane
Age – 72 yrs., Occu. Agri
R/o At Bavi Post Br Yelamb
Tq Shirur Kasar, Dist Beed ...Petitioner

VERSUS

1. Bhimrao s/o Nivrutti Dhakane
Age : 65 years., Occu. Agri
2. Mahesh S/o Bhimrao Dhakane,
Age 34 years, Occu Agril,
3. Sangita W/o Bhimrao Dhakane
Age : 50 Yrs., Occu. Agril,
4. Vaibhav S/o Bhimrao Dhakane
Age : 36 Yrs., Occu. Agril,

All the above R/o as under
At Bavi Post Br Yelamb
Tq Shirur Kasar, Dist Beed ...Respondents

...
Mr. Ramesh Navanath Dhakane, Advocate for the Petitioner
Mr. Kishor D. Khade, Advocate for Respondent Nos.1 to 4
...

CORAM : ROHIT W. JOSHI, J.
DATED : 30th JULY 2025

ORAL JUDGMENT :-

1. The present petition takes exception to order dated 18.11.2024 passed by the learned Civil Judge, Junior Division, Shirur Kasar rejecting the application for amendment of plaint filed by the present petitioner/plaintiff vide 'Exhibit 68' in Regular Civil Suit No.175 of

2012. The said suit is filed by the petitioners seeking a declaration that he is owner of the suit property which is an agricultural land bearing Gat No.806 situated at Village Padali, Tahsil Shirur (Kasar) District Beed.

2. The contention that is sought to be raised by way of amendment is that the petitioner intended to incorporate certain facts pertaining to sale deed of another land bearing Gat No.127 situated in Br. Yelamb Tq Shirur Dist Beed. It is contended that this land was purchased in the year 1981 by the three brothers Nivrutti, Dnyanoba and Keshav and that because Keshav did not have funds at the relevant time for making payment of his part of the consideration, the said amount was paid by his brother Nivrutti. It is further contended that the parties had agreed that as and when Keshav or his descendants refund their part of the consideration to Nivrutti or his descendants, 1/3rd portion in Gat No.127 will be conveyed by Nivrutti or his descendants to Keshav or his descendants. It is contended that in terms of the agreement, sale deed with respect to 1/3rd share in Gat No.127 was executed by descendants of Nivrutti in favour of Maharudra and Laxman who are sons of Keshav. This sale deed is stated to be executed on 08.03.1982. He contends that in the partition between the parties held on 01.08.1993 1/3rd share in Gat No.127 was not allotted to the plaintiffs and therefore, land bearing

Gat No.803 was allotted to his share.

3. The learned Trial Court has observed that the suit is filed in the year 2012. All these developments are of the year 1981, 1982 and allegedly 1993. The learned Trial Court has therefore observed that the plaintiff was aware about all these facts while the suit was filed. The learned Trial Court has recorded that the plaintiff had earlier also filed an application for amendment of plaint in the year 2016.

4. Undisputedly, trial of the suit has commenced with examination of witnesses. The application for amendment is filed after commencing of trial. Perusal of the amendment application does not disclose any reason for not moving the application of amendment before commencement of trial. The proviso to Order VI Rule 17 of the Code of Civil Procedure is mandatory in nature. It restrains a Court from allowing application for amendment after commencement of trial, unless the parties seeking to amend the pleadings establish that the amendment application could not be moved before commencement of trial despite due diligence.

5. The learned Counsel for the petitioner is unable to demonstrate any reason as to why the application for amendment was not filed prior to commencement of trial. Perusal of the application also does

not indicate any reason for the same. In view of the above, no fault can be found with the reasons recorded by the learned Trial Court in rejecting the application for amendment. No case for interference is made out. Writ Petition is therefore **rejected** with no order as to costs.

6. The suit is filed in the year 2012. As informed, the evidence has already commenced, in view of long pendency of the suit it will be expedient that the learned Trial Court is directed to decide the suit as earlier as possible and in any case on or before 30.07.2026.

[ROHIT W. JOSHI, J.]