

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7429 OF 2023**

Pandurang Ganpati Bansode,
Aged about 66 Years,
Occupation: Agriculture/Contractor,
R/o. 3, Basappa Peth, Satara.Petitioner
Vs.

Kasam Chand Mulani-Pathan,
Aged about 65 Years,
Occupation: Agriculturist,
R/o. Kondave, Tal. & District: Satara.Respondent

Mr. Sharad T. Bhosale with Ms. Sutaja Lohar, Mr. Saiprasad Patil, i/b.
Mr. Dilip Bodake, for the Petitioner.
Mr. Vaibhav R. Gaikwad with Mr. Kapil D. Indapurkar & Mr. Varadraj
M. Nikam, for the Respondent.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : 2nd DECEMBER 2025

JUDGMENT :-

1. This Petition takes exception to order dated 29th September 2021 passed by Civil Judge, Senior Division, Satara below Exhibit 47 in Special Civil Suit No.96 of 2014, whereby application filed by Petitioner/plaintiff seeking amendment in plaint has been rejected.
2. Petitioner/original plaintiff instituted Special Civil Suit No.96 of 2014 seeking relief of specific performance of contract in respect

of agreement dated 2nd May 2005. According to plaintiff, defendant agreed to sell lands Gat Nos.55/1 and 56/16 under the said agreement.

3. On 9th December 2019, plaintiff filed application seeking amendment of plaint contending that agreement to sell dated 2nd May 2005 is in respect of land Gat No.55/1 as well as Gat No.56/16. However, since permission to sell in terms of Section 43 of Maharashtra Tenancy and Agriculture Lands Act, 1948 (For short, **‘Tenancy Act’**) was not obtained, Gat No.56/16 was not included in suit. The trial Court rejected application on ground that suit is filed in year 2014. Plaintiff is belatedly seeking addition of property after seven years of institution of suit, as such amendment cannot be permitted.

4. Mr. Sharad Bhosale, learned Advocate appearing for Petitioner submits that agreement to sell dated 2nd May 2005 was subject matter of earlier dispute between parties. In Regular Civil Appeal No.213 of 2013, learned District Judge validated agreement to sell dated 2nd May 2005. Further, in view of Notification dated 7th April 2014, amendment to Section 43 of Tenancy Act is not retrospectively

applicable. Therefore, amendment application was filed seeking addition of Gat No.56/16. He would point out that when application seeking amendment was tendered, recording of evidence was not yet started and trial was not commenced. In that view of matter, he would urge that impugned order be quashed and set aside and application Exhibit 47 be allowed.

5. Per contra, Mr. Vaibhav Gaikwad, learned Advocate appearing for Respondent would submit that agreement to sell dated 2nd May 2005 was subject matter of previous suit. The said litigation is still pending in Second Appeal before this Court. Petitioner-plaintiff seeking to incorporate Gat No.56/16 as suit property, however, by now claim for specific performance in respect of said property is barred by limitation. Plaintiff has not given explanation for inordinate delay in bringing application for amendment. According to him, recording of evidence is already started and permitting amendment at this stage would cause great prejudice to defendant.

6. Having considered submissions advanced by learned Advocates appearing for respective parties and on perusal of pleadings, it can be observed that plaintiff has instituted suit for specific performance of

agreement to sell dated 2nd May 2005. In previous litigation between parties, learned District Judge has accepted validity of agreement to sell dated 2nd May 2005 vide Judgment and Decree dated 23rd July 2019. In this background, plaintiff sought amendment in plaint to incorporate second property in suit i.e., Gat No.56/16, mentioned in agreement to sell. Undisputedly, suit was instituted in respect of only one property i.e., Gat No.55/1 and property bearing Gat No.56/16 was left behind.

7. The record indicates that when application for amendment was filed, trial in present suit was not commenced. It is true that suit is instituted in year 2014 and application for amendment was filed in year 2021, however, plaintiff has given sufficient explanation for delay, particularly, after decision in Regular Civil Appeal No.213 of 2013. At this stage, reference can be given to observations of Hon'ble Supreme Court in case of ***Life Insurance Corporation of India v. Sanjeev Builders Pvt. Ltd.***,¹ particularly in paragraph No.70, which reads as under:

“70.

(iii) *The prayer for amendment is to be allowed*

1 AIR 2022 SC 4256.

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

.....

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x).....

xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party

seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed.”

8. This Court finds that amendment, as stated, is necessary to determine real controversy and void multiplicity of proceeding. It is possible that defendant may raise plea of limitation, however, in facts of present case, issue of limitation needs to be decided in trial. The proposed amendment cannot be thrown away at threshold holding that claim is barred by limitation. As pointed out by Mr. Gaikwad, now suit has been proceeded further and evidence has been recorded. Therefore, some prejudice would cause to Respondent, which needs to be compensated by granting costs.

9. In result, Writ Petition is allowed in terms of prayer clause (b), subject to condition that costs of Rs.10,000/- is paid to defendant.

10. The costs be deposited with trial Court within a period of four weeks from today and failure to deposit costs would entail restoration of order impugned.

(S. G. CHAPALGAONKAR, J.)