



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3719 OF 2025**

Mahadev Shantayya Hiremath	...	Petitioner
versus		
Nasir Ismile Mangalgi	...	Respondent

Mr. Nakul Shukla with Mr. Prasad P. Kulkarni, for Petitioner.

CORAM: N.J.JAMADAR, J.

DATE : 17 MARCH 2025

P.C.

1. Heard the learned Counsel for the parties.
2. The challenge in this Petition is to an order dated 6 November 2024 passed by the learned Civil Judge, Akkalkot, Solapur, whereby the application for amendment preferred by the Plaintiff came to be allowed.
3. Learned Counsel for the Petitioner submitted that initially the suit was instituted for injunction simplicitor, and, later on, the Plaintiff has sought declarations as to the legality of the consent letter executed between the Plaintiff and Defendant in a proceeding under Section 85 of the Maharashtra Land Revenue Code, 1966, and, that the Plaintiff and Defendant have $\frac{1}{2}$ share in the suit property. The proposed amendment would change the nature of the suit. It was further submitted that the challenge to the consent letter in the proceedings under Section 85 of the Code, 1966 is barred by limitation, as the said document was executed in the year 2017 and the

Plaintiff has also referred to the said document in the plaint. Reliance was sought to be placed on a judgment of the Supreme Court in the case of Basavraj v/s. Indira and Ors.¹.

4. I am unable to persuade myself to agree with the submissions of the learned Counsel for the Petitioner. The proposed amendment was sought at a pre-trial stage. Thus, the interdict contained in the proviso to Order 6 Rule 17 of the Code of Civil Procedure, 1908 was not at all attracted. The proposed amendment does not change the nature of the suit as it is the specific stand of the Plaintiff that though some documents were executed before the revenue authorities, there was no partition by meets and bounds between the Plaintiff and Defendant. The proposed amendment appears to be essential for the determination of the real question in controversy between the parties.

5. So far as the ground of limitation, the learned Trial Court was of the view that, it is a mixed question of law and facts and cannot be decided at the stage of consideration of grant of amendment.

6. In view of the decision of the Supreme Court in the case of Raghu Thilak D. John V/s. S. Rayappan and Ors.² the amendment can be allowed keeping open the question of limitation. In the facts of the case at hand, the said course appears to be justifiable.

1 (2024) 3 SCC 705

2 (2001) 2 SCC 472

7. Hence, the Writ Petition stands disposed.
8. However, the question of limitation qua the relief in respect of the consent letter executed by the Plaintiff and Defendant is kept open for adjudication and the trial Court shall decide the same at the time of final disposal of the suit.
9. The learned Judge seized with RCS No.8 of 2022 is also requested to decide the said suit as expeditiously as possible.

(N.J.JAMADAR, J.)