

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6530 OF 2023

1. Smt. Vijaya Vilas Kulkarni,
Age: 77 years, Occu: Household,
R/o: Suryavanshi Lane, Elora Garden
Samrat Nagar Dist: Kolhapur.
 2. Shri. Amrendra Vilas Kulkarni,
Age: 40 years, Occu: Service,
R/o: Suryavanshi Lane, Elora Garden
Samrat Nagar Dist: Kolhapur.
 3. Shri. Narendra Vilas Kulkarni,
Age: 44 years, Occu: Service,
R/o: Sukhvani Emporial, C-2
Phase No. 1, Near Janseva Bank
Pimpri, Pune-18
 4. Smt. Aditi Vijay Singh,
Age: 43 years, Occu: Household,
R/o: Flat no. 2, Heritage Phase 2,
More Vadi, Pimpri, Pune – 18
Through POA holder
Rajendra Anant Jadhav
Age: 42 Occu: Service
R/o: Bagal Chouk Kolhapur
-Petitioners
- Vs.
1. Shri. Anil Narayan Sakpal,
Age: 60 years, Occu: Service,
R/o: Murum, Tal: Phaltan,
Dist: Satara.
 2. Shri. Prithviraj Sambhaji Kakde,
Age: 52 years, Occu: Developer,
R/o: Sadashiv Peth, Tilak Road,
Dist: Pune

3. Shri. Dinkar Vitthal Kadam,
Since deceased through LR's
- 3A. Shri. Mukund Dinkar Kadam,
Age: 49 years, Occu: Business,
R/o: Flat No. 17, Ideal Society,
Sagarmal, Dist: Kolhapur.
- 3B. Shri. Milind Dinkar Kadam,
Age: 47 years, Occu: Business,
R/o: Flat No. 17, Ideal Society,
Sagarmal, Dist: Kolhapur.
- 3C. Smt. Varsha Dinkar Kadam,
Age: 55 years, Occu: Household,
R/o: Flat No. 17, Ideal Society,
Sagarmal, Dist: Kolhapur.
- 3D. Sou. Megha Avinash Pansare,
Age: 25 years, Occu: Household,
R/o: Flat No. 17, Ideal Society,
Sagarmal, Dist: Kolhapur.
- 3E. Sou. Shobha Navin Indulkar,
Age: 54 years, Occu: Household,
R/o: 1020, Bhavani Peth
Dist: Pune
4. Bank of India, Through its Manager
Branch: Kasba Bawda Dist: Kolhapur.Respondents

Mr. Ashirwad Kolekar with Mr. Shrikrishna Ganbavale, for the Petitioner.

Mr. Vishwanath S. Talkute with Ms. Sampada S. Patil, Mr. Pratik Bhojane & Mr. Mahesh Bhosale, for the Respondents.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : 18th NOVEMBER 2025

JUDGMENT :-

1. The Petitioners/original plaintiffs impugn order dated 20th December 2022 passed by Civil Judge, Senior Division, Kolhapur below Exhibit 72 in Regular Civil Suit No.106 of 2012, thereby permitting amendment in written statement.

2. Petitioners are plaintiffs in Regular Civil Suit No.106 of 2012. The suit has been instituted seeking declaration of ownership, so also declaration that sale deed dated 25th August 2007 executed by Respondent No.2 in favour of Respondent No.1 is illegal and not binding on rights of plaintiffs. Respondents filed written statement and refuted Petitioners' claim. During pendency of suit, Respondent No.1 filed application below Exhibit 72 under Order 6 Rule 17 of Code of Civil Procedure (For short, '**CPC**') seeking amendment in written statement. Petitioners opposed said application being delayed. However, trial Court allowed the same, subject to payment of costs of Rs.1500/- to plaintiffs.

3. Mr. Ashirwad Kolekar, learned Advocate appearing for Petitioners along with Advocate Mr. Shrikrishna Ganbavale vehemently submits that trial Court allowed amendment in written

statement, which was sought after nine years of institution of suit. The defendants have not given any explanation for inordinate delay in bringing application for amendment. He would submit that since issues were framed and lists of witnesses were tendered by parties, the trial has been commenced and at such a stage, application could not have been entertained without satisfying 'due diligence' clause as per proviso to Rule 17 of Order 6 of CPC. According to him, proposed amendment is an attempt to drag proceeding in suit, which could not have been entertained without sufficiently compensating plaintiffs.

4. Per contra, Mr. Vishwanath Talkute, learned Advocate appearing for Respondents/defendants supports impugned order. According to him, suit is at pre-trial stage. Recording of evidence has not yet begun. The bar as contemplated under proviso to Rule 17 of Order 6 of CPC would not apply in such case. He would endeavour to demonstrate that amendment is merely explanatory and seeks to bring on record the subsequent events regarding transaction dated 28th November 2016 executed by Power of Attorney of plaintiffs in favour of Swapnil Lingras.

5. Having considered submissions advanced by learned Advocate appearing for respective parties and on perusal of pleadings in plaint, written statement alongwith application for amendment, it is evident that plaintiffs are claiming right over suit property on the basis of sale deed dated 25th August 1977 executed by Mr. Dinkar Kadam in favour of late Vilas Kulkarni. The defendants are challenging validity of said transaction on various counts. It is true that written statement is filed in the year 2013, whereas application seeking amendment in written statement is filed in the year 2022. However, fact remains that till date of filing application for amendment, trial has not yet commenced. So far as contents of proposed amendment are concerned, minute reading of paragraph No.11A to 1E would depict that defendants want to explain his defense already taken in written statement and also want to bring on record sale transaction dated 28th November 2016, which, according to them, noticed in the year 2020.

6. The perusal of impugned order would show that trial Court has considered all the relevant aspects of matter and found that proposed amendment would not cause any prejudice to plaintiffs. Plaintiffs

would have full opportunity to refute contentions sought to be inserted in pleadings, so also cross-examine witnesses of defendants. The trial Court has rightly relied upon law laid down by Supreme Court in case of *Usha Balasaheb Swami & Ors. v. Kiran Appaso Swami & Ors.*¹ wherein it has been observed that prayer for amendment of plaint and prayer for amendment of written statement stand on different footing. The amendment cannot be refused unless it altered material defense or is inconsistent with pleadings raised earlier. It is not the case of Petitioners that proposed amendment seeks to withdraw contentions in written statement causing prejudice to plaintiffs' right.

7. In that view of the matter, this Court do not find jurisdictional error in impugned order requiring exercise of extraordinary power under Article 227 of Constitution of India. However, looking to inordinate delay in preferring application for amendment in written statement, Petitioners/plaintiffs need to be adequately compensated for inconvenience caused to them.

8. In result, Writ Petition stands dismissed, however,

¹ AIR 2006 SC 1663.

Respondents/defendants shall pay costs of Rs.15,000/- to Petitioners, as pre-condition for grant of application Exhibit 72 for amendment in written statement.

9. The costs to be deposited with trial Court within a period of four weeks from date of this order.

(S. G. CHAPALGAONKAR, J.)

RAJU
DATTATRAYA
GAIKWAD
Digitally
signed by
RAJU
DATTATRAYA
GAIKWAD
Date:
2023.11.20
18:57:14
+0530