

Jvs.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 2383 OF 2017
WITH
INTERIM APPLICATION NO. 12630 OF 2023**

JAYANT
VISHWANATH
SALUNKE

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JAYANT VISHWANATH
SALUNKE
Date: 2025.07.28
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Shoukat Isak Khan & Ors.

} **Petitioners**

versus

Hirji & Company & Ors.

} **Respondents**

Mr. Dilip Bodake for petitioners.

Mr. Piyush M. Shah with Mr. Dishang
Shah and Ms. Shreya Modi for respondent
no. 2.

CORAM: ALOK ARADHE, CJ.

DATE: JULY 28, 2025

ORAL ORDER/P.C.:

IA/12630/2023:

- 1.** This interim application has been filed seeking to bring on record the newly appointed Trustees of the respondent no. 1 Trust.
- 2.** Taking in to account the averments made in the application, duly supported by an affidavit, the application is allowed.
- 3.** Let the necessary amendment be carried out in the cause title of the writ petition within a period of one week from today. Reverification is dispensed with.

WP/2383/2017:

4. In this writ petition under Article 227 of the Constitution of India, the petitioners have challenged the validity of the order dated 5th July 2016 passed by the Trial Court, by which, the application for amendment filed by the petitioners/plaintiffs has been rejected.

5. Facts giving rise to filing of the writ petition, in nutshell, are that the petitioners/plaintiffs had filed RCS No. 148 of 2010 against the defendants seeking relief of declaration as well as partition.

6. After the issues were framed, the petitioners filed two applications seeking amendment of the plaint. The aforesaid applications have been rejected by the Trial Court by the impugned order on the ground that the proposed amendment is not at all necessary for adjudication of the real controversy in the suit. The Trial Court has partly allowed the another application for amendment.

7. I have heard learned counsel for the parties and perused the record.

8. The applications for amendment were made before the trial had commenced. During the pendency of the suit, the defendant no. 1 gifted the property to defendant no. 2 vide the gift deed dated 7th February 2006. The Trial Court ought to have appreciated that while dealing with the applications for amendment, the merits of the plea contained in the applications for amendment could not have been examined. The Trial ought to have appreciated that the proposed amendment was necessary for effective and complete adjudication of the

controversy involved in the suit. The discretion has been exercised by the Trial Court erroneously.

9. The impugned order, therefore, suffers from error apparent on the face of the record, which is, hereby, quashed and set aside.

10. In the result, the writ petition is allowed.

11. Needless to state that the issue with regard to limitation in respect of the reliefs claimed by way of amendment is kept open, which shall be decided by the Trial Court on its own merits.

12. Let a copy of this order be forwarded to the Trial Court forthwith.

(CHIEF JUSTICE)