

VRJ

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

WRIT PETITION NO.7969 OF 2023

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Jagnnath Mahadev Alias Mahadu
Bodare & Ors.

... Petitioners

V/s.

Narayan Ganpat Bodare & Ors.

... Respondents

Mr. Vaibhav R. Gaikwad for the petitioners.

Ms.Gunjan P. Shah i/by Kayval P. Shah for the
respondents.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : OCTOBER 1, 2025

P.C.:

1. The petitioners – original defendant Nos. 1 and 8 to 11 take exception to order dated 14th February 2023, passed by learned Civil Judge, Junior Division, Koregaon, District Satara, whereby application seeking amendment in written statement was rejected.
2. Respondent No. 1 – original plaintiff instituted Regular Civil Suit No. 62 of 2017, seeking partition and separate possession in respect of the suit properties. The petitioners – defendants filed their written statement in 2017 and refuted contents of the plaint. The Trial Court framed issues based on pleadings of the parties.

The plaintiff tendered evidence affidavit. At this stage, the petitioners – defendants filed an application seeking amendment in written statement below Exhibit–67. The Trial Court refused to entertain application on the ground that facts sought to be brought on record by way of amendment were within the knowledge of defendants and application was filed at a belated stage, particularly when the trial had already commenced.

3. Learned advocate appearing for petitioners–defendants submits that petitioners want to bring on record pleadings which are supported by entries in the revenue record. The trial is yet to commence, although plaintiff has tendered evidence affidavit. Cross-examination has not yet started. In this background, the amendment could have been allowed.

4. Per contra, learned advocate appearing for respondents vehemently opposed the prayers in writ petition, contending that application was filed at the stage of evidence only with the intention to protract trial. The defendants are taking such pleas solely with intention to delay decision in the suit. He would further invite attention of this Court to proposed amendment and submit that defendants are attempting to withdraw certain admissions,

which may cause serious prejudice to rights accrued in favour of the plaintiff.

5. Having considered submissions advanced, it can be observed that the application for amendment was filed when plaintiff had merely tendered evidence affidavit and trial is not yet commenced. At such a stage, amendment in written statement can be liberally granted, except when such amendment does not cause prejudice to plaintiff in a way that it tries to withdraw certain admissions and completely changing the defence put forth by written statement.

6. Perusal of amended provisions of Order VI Rule 17 of Civil Procedure Code, 1908, indicates that due diligence clause would have application only when amendment is sought at a stage when trial has already commenced. In the present case, trial is yet to commence. The Trial Court rejected application for amendment in written statement, observing that the application was tendered after commencement of trial. Apparently, such observations are not correct.

7. In that view of the matter, it would be appropriate to set aside impugned order and remit the matter to Trial Court for fresh consideration. In result, writ petition is partly allowed.

8. Impugned order dated 14th February 2023, passed by learned Civil Judge, Junior Division, Koregaon, District Satara, below Exhibit – 67, is quashed and set aside.
9. Trial Court shall consider the application filed below Exhibit – 67 afresh after considering rival submissions.
10. All contentions raised by parties are kept open to be agitated before Trial Court.

(S. G. CHAPALGAONKAR, J.)