

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11131 OF 2025**

Kiran Ambadas DhayafulePetitioner

Vs.

Usha alias Radhika Tanaji

Hanchate & Anr.

.....Respondents

Mr. Prasad P. Kulkarni with Mr. Amol A. Kanaki, for the Petitioner.

Mr. Hrishikesh S. Shinde, for the Respondent No.2.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : 16th DECEMBER 2025

PC.:-

1. Mr. Kulkarni seeks permission to delete name of Respondent No.1. The permission is granted at his risk. Amendment to be carried out forthwith.

2. The present Writ Petition takes exception to order dated 26th June 2025 passed by Civil Judge, Junior Division, Solapur below Exhibit 17 in Regular Civil Suit No.6 of 2025, by which application filed by Petitioner/original plaintiff seeking amendment in plaint has been rejected.

3. The Petitioner filed Regular Civil Suit No.6 of 2025 claiming

relief of perpetual injunction against defendant, particularly, sought injunction that properties described in plaint paragraph No.1A to 1D shall not be alienated by defendant or they shall not create third party interest in it. It appears that during pendency of suit defendants alienated part of suit property.

4. In this backdrop, application was moved under Order 1 Rule 10 of Code of Civil Procedure read with Order 6 Rule 17 of CPC for impleading purchaser as defendant and 15 other persons. The trial Court rejected said application on the ground that suit properties are Hindu Undivided Family properties, but plaintiff has not claimed partition of suit properties. Similarly, in light of Section 41(h) of Specific Relief Act, 1963, plaintiff is not entitled for decree for perpetual injunction, when plaintiff has efficacious remedy. In short, trial Court was of view that plaintiff's suit itself was not maintainable.

5. Mr. Prasad Kulkarni, learned Advocate appearing for Petitioner would submit that application for amendment was submitted at pre-trial stage. The trial Court could not have gone into merits of proposed amendment and could have decided application on

touchstone of parameters to be considered while granting amendment.

6. Per contra, Mr. Shinde, learned Advocate appearing for Respondent No.2 supports impugned order. He would bring to notice of this Court prayers in original suit, so also proposed amendment and contends that plaintiff's suit itself would not be maintainable.

7. Having considered submissions advanced by learned Advocate appearing for respective parties, it cannot be disputed that application for amendment in plaint was filed at pre-trial stage. It is trite that amendment shall be permitted unless it changes nature of suit or seeks to withdraw admissions given in plaint.

8. In present case, suit is instituted for relief of perpetual injunction seeking directions against defendants to not to alienate suit properties or create third party interest. However, during pendency of suit, defendants have created third party interest. It is, therefore, necessary to bring on record purchasers as party defendants in suit. Apparently, by allowing proposed amendment, nature of suit would not be altered.

9. It is trite that merits of amendment cannot be examined while considering application for amendment. It would be open for trial Court to adjudicate upon merits of matter during course of trial. The defendants would also be entitled to refute contents of proposed amendment by filing additional written statement.

10. In that view of matter, this Court finds that trial Court failed to exercise jurisdiction in judicious manner. In result, Writ Petition is allowed in terms of prayer clause (a).

11. Application Exhibit 17 in Regular Civil Suit No.6 of 2025 pending before Civil Judge, Junior Division, Solapur is allowed.

12. Needless to state here that defendants would have opportunity to refute amended pleading by filing additional written statement and trial Court would examine merits of amended pleadings during course of trial.

(S. G. CHAPALGAONKAR, J.)

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signed by
RAJU
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GAIKWAD
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