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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

VASANT
ANANDRAO
IDHOL

WRIT PETITION NO.12520 OF 2023

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ANANDRAO
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Date: 2025.07.02
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Kundlik M. Mali & Ors.

... Petitioners

vs.

Waman D. Jamdade (since deceased)

... Respondents

through L.Rs. - Ramesh V. Jamdade & Ors.

Mr. Vishwanath S.Talkute for the Petitioners.

Mr.Ajay Joshi for Respondent Nos.1-A, 1-C, 1-D, 10, 11, 12
and 14.

CORAM : GAURI GODSE, J.

DATED : 24th JUNE 2025

ORDER:

1. By an order dated 12th October 2023, notice for final disposal was issued. Respondent Nos.1-A, 1-C, 1-D are

represented through an advocate. As per office remarks, all the Respondents, except Respondent Nos.13 and 15, are served. Learned counsel for the Petitioners submits that the suit has proceeded *ex-parte* against Respondent Nos.13 and 15, and notice would not be necessary to them.

2. This Petition is filed by the Plaintiffs to challenge the rejection of their application for carrying out an amendment to the plaint. The contesting Respondents are served. Since the suit has proceeded *ex-parte* against Respondent Nos.13 and 15, notice of this Petition would not be necessary to them.

3. The Petitioners are original Plaintiffs, who have filed suit for a declaration, easementary rights and injunction. Learned counsel for the Petitioners submits that Respondent Nos.1, 2 to 7 and 8 have filed their written statement on 21st November 2020 and contested the suit. Learned counsel for the Petitioners submits that the issues are not yet framed. The Plaintiffs filed an application on 20th January 2023 seeking leave to amend the plaint. Respondent Nos.1 and 2, i.e. original Defendant Nos.1 and 2, filed their reply to the application and opposed the proposed amendment. By the

impugned order, the learned Judge has rejected the Plaintiffs' application seeking permission to carry out an amendment to the plaint. Hence, this Petition by the original Plaintiffs.

4. Learned counsel for the Petitioners submits that the application for leave to amend the plaint has been filed at the pre-trial stage. He submits that even the issues are not framed. Hence, there was no reason to reject the application for amending the plaint. He submits that the learned Judge has examined the merits of the proposed amendment and rejected the application. He submits that it would always be open to the Defendants to file their additional written statement in response to the proposed amendment. He, therefore, submits that the application needs to be allowed by permitting the Plaintiffs to carry out the amendment.

5. Learned counsel for Respondent Nos.1 and 2 opposes the amendment application. He submits that the amendment, if allowed, would alter the nature of the suit. Hence, according to the learned counsel for Respondent Nos.1 and 2, if the amendment is allowed, the rival contentions pertaining to the proposed amendment, including the issue of limitation, should be kept open.

6. I have perused the papers of the Writ Petition. There is no dispute that the amendment application is filed at the pre-trial stage. A perusal of the application reveals that the Plaintiffs filed the application to amend the plaint on the grounds that, due to the unavailability of certain information at the time of filing the suit, the amendment sought to be carried out did not form part of the original pleadings. The Plaintiffs, therefore, on the ground of the availability of necessary information, filed an application for permission to carry out an amendment to the plaint. A perusal of the reasons referred to in the impugned order shows that the learned Judge has considered the merits of the proposed amendment, with reference to the pleadings regarding easementary rights claimed by the Plaintiffs. The learned Judge has further observed that the proposed amendment would change the nature of the suit and would cause irreparable loss and prejudice to the Defendants. I do not find that the reasons recorded in the impugned order to refuse permission are sustainable in law. It is an established legal principle that the proposed amendment, even if it is inconsistent, the same cannot be the ground for rejection of leave to amend. The plea of limitation can be raised by filing

an additional written statement, and only allowing the amendment would not change the merits of the rival pleadings. The reasons recorded in the impugned order that the proposed amendment would change the cause of action as it is inconsistent with the original pleadings, and therefore, cannot be acceptable is no ground to refuse amendment. No prejudice would be caused to the Defendants if the amendment is allowed. If the Defendants have already filed the written statement, it will always be open to the Defendants to file an additional written statement to deal with the proposed amendment.

7. For the reasons recorded above, in my opinion, the application for leave to amend the plaint deserves to be allowed. The contentions of the merits of the proposed amendment can be dealt with by filing an additional written statement. The Petition is therefore allowed by the following order:-

- a) The impugned order dated 2nd May 2023 passed by the learned Joint Civil Judge (J.D.), Pandharpur, below Exhibit 116 in Regular Civil Suit No.239 of 2020 is quashed and set aside.

b) Application at Exhibit 116 in Regular Civil Suit. No.239 of 2020 is allowed. The Plaintiffs are permitted to carry out the amendment as per the schedule of the amendment in Exhibit 116, within four weeks from the date of production of an authenticated copy of this order before the trial Court.

d) The Defendants are allowed to file an additional written statement within six weeks thereafter.

e) It is clarified that all the contentions of the parties on the merits of the suit, including any objections on limitation, are kept open.

8. The Writ Petition is allowed in the aforesaid terms.

(GAURI GODSE, J.)