

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
WRIT PETITION NO.12128 OF 2025**

Shri Mayappa Govind Mane
Age: 67, Occu. Agriculture,
R/o. Shegaon, Tal. Jath, Dist. Sangli.

..Petitioner
(Orig. Defendant No.1)

Versus

1. Yeshunath Laxman Mane,
Age. 30, Occu. Agriculture,
R/o. Manewadi Shegaon, Tal. Jath, Dist. Sangli
2. Bhanudas Laxman Mane,
Age. 47, Occu. Agriculture,
R/o. Shegaon, Tal. Jath, Dist. Sangli
3. Hirabai Laxman Mane
Age. 77, Occu. Agriculture
R/o. Shegaon, Tal. Jath, Dist. Sangli
4. Suman Shamrao Sumbale
Age. 52, Occu. Agriculture
R/o. Mirawad, Tal. Jath, Dist. Sangli
5. Chaya Raghunath Masal
Age. 47, Occu. Agriculture
R/o. Sangli, Tal. Jath, Dist. Sangli
6. Kalpana Ganpati Kolekar
Age. 42, Occu. Agriculture and household
R/o. Hingangaon, Tal. Kavthe-Mahankal,
Dist. Sangli

..Respondents
(Respondent No.1/Plaintiff)

...

Mr. Umesh Mankapure i/by Mr. Pankajsinh Arvind Deshmukh,
Advocate for Petitioner.

...
**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 13th NOVEMBER, 2025.**

FINAL ORDER:-

1. The petitioner impugns order dated 28.08.2025 passed by Civil Judge Junior Division, Jath below Exhibit-137 in Regular Civil Suit

No.102/2008, thereby allowing application of respondent no.1/plaintiff seeking amendment in plaint.

2. The respondent no.1/original plaintiff instituted Regular Civil Suit No.102/2008 seeking relief of perpetual injunction in respect of suit property i.e. land Gut No.934. The Trial Court partly decreed suit and restrained petitioner/defendant from obstructing plaintiff's possession over suit property. Aggrieved defendant filed Regular Civil Appeal No.243/2015 before District Judge at Sangli, which was partly allowed and suit was remitted back to Trial Court for fresh hearing with direction to appoint TILR/DILR as Court Commissioner and then decide suit based on report of Court Commissioner. Eventually, vide order dated 05.07.2022 TILR was appointed as Court Commissioner, who filed his report indicating that petitioner/defendant has encroached upon land of plaintiff. At this stage, respondent no.1/plaintiff filed application below Exhibit-137 seeking amendment in plaint for incorporating prayer for removal of encroachment and possession. The Trial Court allowed said application vide impugned order dated 28.08.2025. Hence, this Writ Petition.

3. Mr. Mankapure, learned Advocate appearing for petitioner would submit that plaintiff has originally instituted suit for permanent injunction, whereas by way of amendment he seeks entirely distinct relief of possession, which alters nature of suit. He would further submit that in first round of litigation, plaintiff had sought amendment

in plaint. The said application was rejected by Trial Court. As such, application filed for similar relief after remand of matter would be bared by principles of *res-judicata*, which is applicable to interlocutory orders also.

4. Having considered submissions advanced, it can be observed that respondent/plaintiff instituted suit simplicitor for injunction. In that suit, Court Commissioner was appointed, who submitted report below Exhibit-99. Accordingly, suit was decreed. However, in Regular Civil Appeal No.243/2015 filed by petitioner, decree was set aside and matter was remitted back for fresh consideration directing appointment of Court Commissioner. Apparently, report of Court Commissioner submitted below Exhibit-99 was held to be technically unsound. The District Judge observed previous report is not based on joint measurement. The District Judge, therefore, quashed and set aside decree and remitted matter with specific direction to appoint TILR/DILR as Court Commissioner.

5. After remand of matter, Trial Court appointed Court Commissioner for joint measurement of Gut Nos.934, 935 and 960 owned by parties. The Court Commissioner submitted his report depicting encroachment on plaintiff's property. In this background, application is moved for amendment to incorporate relief for removal of encroachment and possession. The Trial Court observed that defendants have prayed to contest proposed amendment when earlier

suit was in respect of self-same properties and report of Commissioner depicts encroachment, plaintiff can certainly seek amendment for removal of encroachment and possession. Such an amendment would not result in changing nature of suit. The Trial Court also observed that amendment needs to be permitted to avoid multiplicity of proceeding. The Trial Court has also kept open point of limitation.

6. Mr. Mankapure, learned Advocate appearing for petitioner endeavours to contend that during earlier round of suit prayer for amendment was rejected. However, on perusal of record it is evident that it was order passed prior to remand of matter. Further, while passing said order, Trial Court was of view that application for amendment is not moved at appropriate stage. This Court finds that rejection of amendment application filed below Exhibit-61 in previous round of litigation would not bar fresh application for amendment, which is filed on the basis of Court Commissioner's report after joint measurement. At this stage reference can be given to observations of Madras High Court in case of ***N. Palaniammal and Others Vs. B. Chandrakala and Another***BI (*Civil Revision Petition No.803 of 2009* decided on **27.04.2011**), particularly in paragraph nos.11 and 12, which reads as under:

“11. While entertaining an application for amendment, the Court cannot go into the merits of the amendment. The merits of the pleadings by way of amendment cannot be gone into at the time of entertaining the application for amendment of pleadings and the same can be gone into only at the time of trial. Law of pleadings is only to ensure that both parties are

aware of the contentious issues before parties go for trial. The Courts have to see that substantial justice is done between the parties and the Code of Procedure itself was designed to facilitate that substantial justice is done. When doing substantial justice, all technical pleas have to be considered next to rendition of substantial justice. At the same time, when a party seeks amendment of the pleadings incorporating totally a new cause of action, the same cannot be permitted. In the case on hand, as stated already, the 1st respondent though originally sought for permanent injunction against the petitioners, now seeking a relief of recovery of possession. Whatever the reason be, for filing such application, the sum and substance is that the 1st respondent admitting the possession of the petitioners, seeking a relief of recovery of possession.

12. In the judgment reported 2008(1) CTC 19 (R.Dhanalakshimi and others Vs. Senthilkumari and others), the Division Bench of this Court, considering the several decisions of the privy council as well as the Hon'ble Apex Court, has held that the Court has got power to allow either party to alter or amend pleadings at any stage of proceedings which is necessary for purpose of determining real questions of controversy between parties.

7. In result, there is no infirmity in impugned order. Hence, Writ Petition stands dismissed.

(S. G. CHAPALGAONKAR)
JUDGE