

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
WRIT PETITION NO.12224 OF 2025**

1. Ramakant Shankar Salunke
Age: 69 yrs, Occ: Business;
 2. Reshma Ramakant Salunke
Age: 60 yrs, Occ: Household;
 3. Rupesh Ramakant Salunke
Age: 38 yrs, Occ: Business;
 4. Hridaynath Ramakant Salunke
Age: 36 yrs, Occ: Business;
 5. Rahul Ramakant Salunke
Age: 34 yrs, Occ: Business;
1 to 5 all residing at/post
Korle, Tal Lanja, Dist: Ratnagiri
- ..Petitioners

Versus

1. State of Maharashtra,
Through Collector, Ratnagiri
 2. Grampanchayat Korle,
Through Sarpanch
R/o: Korle, Tal: Lanja,
Dist: Ratnagiri, 416701.
- ..Respondents

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Ms. Vrushali Maindad a/w Ms. Gayatri Kulkarni a/w Ms. Shivani Veer,
Advocate for Petitioners.

Mr. J. P. Patil, AGP for Respondent No.1.

Mr. Rahul S. Rane, Advocate for Respondent No.2.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 15th DECEMBER, 2025.**

FINAL ORDER:-

1. The present Writ Petition takes exception to order dated 16.10.2025 passed by Joint Civil Judge Senior Division, Ratnagiri in Regular Civil Suit No.263/2015, thereby rejecting application of petitioners/plaintiffs seeking amendment in plaint.

2. The petitioners filed Regular Civil Suit No.263/2015 before Civil Judge Senior Division at Ratnagiri under Section 38 of Specific Relief Act, 1963, seeking relief of perpetual injunction against respondents from demolishing construction of shed raised by petitioners.

3. The respondent/defendant filed written statement refuting petitioners' claim. They pleaded that construction of petitioners is within their land. The Court Commissioner was appointed during pendency of suit. The report of Court Commissioner depicts that construction raised by petitioners is within Gut No.49 owned by respondent.

4. The issues were framed and suit was posted for evidence. At this stage, petitioners/plaintiffs filed application below Exhibit-110 seeking amendment in plaint to incorporate paragraph nos.6-A and 9-E and prayer in paragraph no.8 of plaint. The Trial Court rejected application on ground that application is filed after commencement of trial. The amendment pertains to facts which were within knowledge of plaintiffs and no explanation is given to make due diligence.

5. Ms. Vrushali Maindad, learned advocate appearing for petitioners would submit that petitioners would restrict amendment to the extent of incorporating prayer as shown in paragraph no.6 of application Exhibit-110, by which petitioners have prayed for alternate relief of mandatory injunction against defendants to accept

compensation or alternate land from plaintiffs in lieu of encroached portion of land as per Commissioner's report. Ms. Maindad would further submit that plaintiffs would not seek permission to lead additional evidence or cross-examine witness of defendant in pursuance to additional prayer sought to be incorporated by way of amendment.

6. Mr. Rahul Rane, learned advocate appearing for respondent no.2 and Mr. Patil, learned AGP appearing for respondent no.1 support impugned order. According to them, relief of mandatory injunction would be barred by limitation and in absence of compliance of due diligence clause, Trial Court is justified in declining permission to amend plaint sought at the fag end of trial in suit.

7. Having considered submissions advanced by learned Advocates appearing for respective parties, it can be observed that plaintiffs have filed simplicitor suit seeking perpetual injunction against defendant in respect of shed constructed by them. The defendant has specifically pleaded that construction of shed stands in their land. The report of Court Commissioner supports case of defendant. In this background, petitioners/plaintiffs want to add alternate prayer and offer compensation towards encroached portion of land or alternate land from their ownership to defendant and seeks directions for balancing equity.

8. Perusal of impugned order would show that Trial Court has correctly applied principles governing amendment. Normally in absence of compliance of due diligence clause, amendment in plaint cannot be allowed after commencement of trial. However, it is always discretion of Court to mould reliefs in suit and balance equities.

9. In present case, if amendment to the extent of incorporation of prayer for mandatory injunction specified in paragraph no.6 of application Exhibit-110 is permitted, it would facilitate Court to pass necessary orders to balance equities. Even it would help Court to finally decide controversy between parties and grant effective relief in suit. Even multiplicity of litigation can be avoided. In light of aforesaid observations, following order is passed:

ORDER

- a. Writ Petition is partly allowed.
- b. The amendment to the extent of incorporating paragraph no.9-E stipulated in paragraph no.6 of application is allowed. However, petitioners/plaintiffs shall not be entitled to lead any evidence or cross-examine any witness of defendant in pursuance to incorporation of amended prayer. The rest of order as passed by Trial Court is maintained.
- c. It is made clear that, since trial has reached to the stage of argument, petitioners shall carry amendment within period of two

weeks from date of this order. The defendant shall be entitled to file additional written statement to counter amended prayer and parties shall proceed to argue matter without seeking adjournment.

(S. G. CHAPALGAONKAR)
JUDGE