

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8893 OF 2024**

1. Balasaheb Lalasaheb Jadhav
Age- 66 years, Occ.L Agri.
R/o- Palus, Tal- Tasgaon, Dist- Sangli
2. Bhujangrao Bapusaheb Jadhav-Fadnaik
(Since Deceased) through his Legal heirs

2(a) Amar Bhujangrao Jadhav
Age- 60, Occ.: Agriculturist
R/o-Palus, Tal- Tasgaon, Dist- Sangli

2(b) Uday Bhujangrao Jadhav
Age-55, Occ.L Agri
R/o- Palus, Tal- Tasgaon, Dist- Sangli

2(c) Bharat Bhujangrao Jadhav
Age-52, Occ.: Agri
R/o- Palus, Tal- Tasgaon, Dist-Sangli

2(d) Pandurang@ Mansing Bhujangrao Jadhav
Age-45, Occ.: Agri.
R/o- Palus, Tal- Tasgaon, Dist- Sangli

2(e) Laxmibai Bhujangrao Jadhav
Age- 80, Occu. Agri.
R/o- Palus, Tal- Tasgaon, Dist- Sangli

2(f) Sou. Mohini Sanjay Shinde
Age- 49, Occu.: Agri.
R/o- Aarwade, Tal- Tasgaon, Dist- Sangli

2(g) Sou. Sheela Ranjit Bagal
Age- 45, Occu. Agri.
R/o Aarwade, Tal- Tasgaon, Dist- Sangli

.....Petitioners

Versus

1. Vyankatrao Shankarrao Jadhav
(Since Deceased) Through Legal Heirs

(2)

1(a) Anadrao Vyankatrao Jadhav
Age-75, Occ- Agri.
R/o- Bahirewadi, Tal- Panhala
Dist- Kolhapur

1(b) Sayaji Vyankatrao Jadhav
Age-72, Occ- Agri.
R/o- Bahirewadi, Tal- Panhala
Dist- Kolhapur.

1(c) Smt. Smita Shivaji Jadhav
Age-75, Occ. Household
R/o- Bahirewadi, Tal-Panhala
Dist- Kolhapur

1(d) Vaibhav Shivaji Jadhav
Age- 25, Occ. Agri.
R/o Bahirewadi, Tal- Panhala
Dist- Kolhapur

1(e) Vrishali Shivaji Jadhav
Age-22, Occ. Household
R/o- Bahirewadi, Tal- Panhala
Dist-- Kolhapur

1(f) Pushpa Sambhaji Jadhav
Age-60, Occ. Household
R/o- Bahirewadi, Tal- Panhala
Dist-- Kolhapur

1(g) Vijayrao Vyankatrao Jadhav
Age-55, Occ. Agri.
R/o- Bahirewadi, Tal- Panhala
Dist-- Kolhapur

1(h) Sulochana Sajjan Patil
Age-75, Occ. Household.
R/o- Bahirewadi, Tal- Panhala
Dist-- Kolhapur

2. Baburao Dnyanu Patil
(Since Deceased) through his Legal heirs
.....Respondents

2(A) Sajjan Baburao Patil
Age- 70, Occ. Agri.
R/o Warna Kodoli, Tal- Panhala

Dist- Kolhapur.

2(B) Bujanrao Baburao Patil

Age- 60, Occ. Agri.

R/o Warna Kodoli, Tal- Panhala

Dist- Kolhapur.

2(c) Niwas Baburao Patil

Age- 58, Occ. Agri.

R/o Warna Kodoli, Tal- Panhala

Dist- Kolhapur.

2(D) Sampatrao Baburao Patil

Age- 55, Occ. Agri.

R/o Warna Kodoli, Tal- Panhala

Dist- Kolhapur.

3. Hanmant Yashwant Jamadar
Age-70, Occ- Agri.
R/o-Bhadole, Tal- Hatkanagle,
Dist- Kolhapur.
4. Ratnabai Anadrao Mohite,
(Since Deceased) through her Legal heirs

4(1) Ajit Anadrao Mohite
Age- 75, Occ. Agri.
R/o- Panchashil Building, Rethare, Bu.
Tal- Karad, Distr-Satara
4(2) Vijaykumar Anadrao Mohite
Age- 70, Occ. Agri.
R/o- Panchashil Building, Rethare Bu.
Tal- Karad, Dist- Satara.

4(3) Pratibha Chandrakant Bhosale
Age- 93, Occ. Household
R/o- Chandinagar, Hupari,
Tal- Hatkanagle, Dist- Kolhapur
5. Chandraprabh @Chandrabhaga Bhimrao
Patil, Age- 70, Occ. Agri.
R/o- Sakhrule, Tal- Walava,
Dist- Sangli.
6. Sou. Urmiladevi Laxmanrao Deshmukh
Age-70, Occu. Household

R/o- Aranyeshwar, Arandvane Opp.
Dr. Buddh Hospital, Pune.

7. Sou. Kamaladevi Vishwasrao Ranvare
Age-65, Occu. Household
R/o- Jinti, Tal- Faltan, Dist- Satara
8. Sou. Kusum Krishnarao Shinde
Age- 65, Occu. Household
R/o. Arawde, Tal- Tasgaon, Dist- Sangli
9. Sou. Suman Dattajirao Ranvare,
Age- 63, Occu. Household
R/o. Jinti, Tal- Faltan, Dist- Satara.
10. Smt. Khashabai Lalasaheb Jadhav
Age- 85, Occu. Household
R/o- Palus, Tal- Tasgaon, Dist- Sangli.
11. Sou, Chhabutai baburao Deshmukh
Age- 68, Occu. Household
R/o- Kasegaon, Dist- Solapur.
12. Smt. Shalan Krishna Kakade
Age- 58, Occu. Household
R/o- Borkhed, Tal- Sangola, Dist- Solapur.
13. Smt. Malan Tukaram Dubal
Age- 54, Occu. Household
R/o- Dubal Dhulgaon, Tal- Miraj,
Dist- Sangli.
14. Mansingrao Jaysingrao Jadhav
Age-80, Occu. Retired
R/o- Vasang Nagar, Vasant Vasahat Opp.
Circuit House, Kolhapur.
15. Fattesing Jaysingrao Jadhav
Age- 72, Occu. Agri.
R/o- Sahasanchalak, G.S.D. Maharashtra State Pune
16. Sou. Leela Rangrao Patil.
Age- 82, Occu. Household
R/o- Kodoli, Tal- Panhala, Dist- Kolhapur
17. Sou. Kamal Vishnupat Patil

Age- 70, Occu. Household
R/o- Kundal, Tal- Tasgaon, Dist- Sangli

18. Sou. Suvarna Rajendra Nimbalkar
Age-58, Occu. Household
R/o- Back side of Saraswati Talikes, Kolhapur.
19. Sou. Snehalata Dinkar Javalekar (Patil)
Age- 55 years, Occu. Household
R/o. P. T. S. Hadapsar, Ramtekadi,
Maharashtra Housing Board, Pune
20. Naslinibai Mansingrao Jadhav, (Since deceased)
through her legal heirs,

(A) Sou. Sagum Sunil Patil,
Age-65 years, Occu. Household
R/o. Neminath Nagar, Sangli,
Sunita Memorial accident Hospital,
(B) Sou. Kusum Shirke, Age: Adult
R/o. Bahirewadi, Tal- Panhala, Dist- Kolhapur,

(C) Sou. Shweta Desai, Age; Adult
R/o. Bahirewadi, Tal- Panhala, Dist- Kolhapur,

(D) Sou. Vasanti Chavan, Age; Adult
R/o. Bahirewadi, Tal- Panhala, Dist- Kolhapur,

20(A1) Soniya Pratpsinha Shirke, Age: Adult
R/o. Bahirewadi, Tal- Panhala, Dist- Kolhapur,

20(B2) Shweta Indrajit Desai, Age: Adult
R/o. Bahirewadi, Tal- Panhala, Dist- Kolhapur,

20(C3) Swarun Vikaram Shinde, Age: Adult
R/o. Bahirewadi, Tal- Panhala, Dist- Kolhapur,
21. Sou. Sanjivani Fattensing Jadhav,
Age- 60 years, Occu. Household,
R/o. Vasant Vasahat, Back side of
Circuit House, Kolhapur,
22. Nilesh Vishwanath Jadhav, Sarnaik,
Age- 50 years, Occu. Agri.
R/o. Vasant Vasahat, Back side of
Circuit House, Kolhapur,

23. Vasant Rajaram Jadhav, (since deceased)
through his legal heirs
- A. Bhagwan Vasantryao Jadhav
Age- 65, Occu. Agri.
- B. Amar Vasantryao Jadhav,
Age- 67 years, Occu. Agri.
- C. Sou. Pushpa Jaysing Patil,
Age- 50 years, Occu. Household,
R/o. Tasgaon, Dist- Sangli
- D. Smt. Shakuntala Vasantryao Jadhav
Age- 80 years, Occu. Agri,
A, B and D R/o. Ghunaki, Tal- Hatkanagle,
Dist- Kolhapur,
24. Balasaheb Rajaram Jadhav,
Age-67 years, Occu. Agri,
R/o. Ghunaki, Tal- Hatkanagle, Dist- Kolhapur,
25. Yashwant Rajaram Jadhav, (Since deceased)
through his legal heirs,
- (1) Mohan Yashwant Jadhav
Age-45 years, Occu. Agri.
R/o. Ghunaki, Tal- Hatkanagle, Dist- Kolhapur,
- (2) Sou. Sunita Pandurang Patil,
Occu. Household,
R/o. Tasgaon, Tal- Hatkangale, Dist- Kolhapur,
- (3) Sou. Asmita Doulat Pawar,
Age- 58 years. Occu. Household,
R/o- Chikurde, Tal- Walava, Dist- Sangli,
- (4) Smt. Balabai yashwant Jadhav
Age- 85 years, Occu. Household,
R/o. Ghunaki, Tal- hatkanagle,
Dist. Kolhapur.
26. Shashikala Ganpatrao Jadhav (died)
through her legal heirs.
(1) Jaywant Ganpatrao Jadhav

(died) Through his legal heirs

26(1a) Smt. Kusum Jaywantrao Jadhav,
Age-90 years, Occu. Household,
R/o. Bahirewadi, Tal- Panhala, Dist. Kolhapur.

26(1b) Nilesh Jaywantrao Jadhav
Age-58 years, Occu. Service,
R/o. As above.

26(c) Sudhir Jaywantrao Jadhav
Age-50 years, Occu. Service,
R/o. As above.

26(d) Ranjit Jaywantrao Jadhav
Age-50 years, Occu. Service,
R/o. As above.

(2) Anandrao Ganpatrao Jadhav (died)
through his legal heirs,
Age-50 years, Occu. Service,
R/o. As above.

26(2a) Pratap Anandrao Jadhav
Age-62 years, Occu. Agri,
R/o. Bahirewadi, Tal- Panhala, Dist- Kolhapur

26(2b) Amol Anandrao Jadhav
Age-58 years, Occu. Agri,
R/o. As above

26(2c) Sou. Vasundhara Vasantrao Patil,
Age-55 years, Occ. Household,
R/o. Sai Colony Gargoti, Dist- Kolhapur

26(2d) Smt. Mangal Anandrao Jadhav,
Age-85 years, Occu. Agri,
R/o. Bahirewadi, Tal- Panhala, Dist- Kolhapur

(3) Sou. Usha Balasaheb Patil, Age: Adult,
Age; Adult, Occu. Household,
R/o. Bahirewadi, Tal- Panhala, Dist- Kolhapur,

27. Akkatai Dhanaji Shinde,
Age- 40 years, Occ. Household,
R/o. Ghunaki, Tal- Hatkangale, Dist- Kolhapur,

28. Smt. Subhadra Vilas Jadhav,
Age- 60 years, Occu- Household,
R/o. Bahirewadi, Tal- Panhala, Dist- Kolhapur.
29. Sandip Vilas Jadhav
Age- 32 years, Occu- Agri,
30. Suyash Vilas Jadhav,
Age 26 years, Occ.- Agri,
29 and 30 R/o. Bahirewadi, Tal- Panhala, Dist- Kolhapur,
31. Vasant Ganpatrao jadhav,
Age- 80 years, Occu. Agri,
R/o. Ghunaki, Tal- Hatkangale,Respondents.

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Mr. Chetan G. Patil a/w Mr. Prathamesh P. Magdum a/w Ms. Siddheshwari R. Chavan i/by Mr. Mandar G. Bagkar, Advocate for Petitioners.

Mr. Rushikesh G. Patil, Advocate for Respondents.

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 10th NOVEMBER, 2025.

PRONOUNCED ON : 17th NOVEMBER, 2025.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With consent of parties, matter is taken up for final hearing at admission stage.
2. The petitioners impugns order dated 01.07.2023 passed by District Judge, Kolhapur below Exhibit-76 in Regular Civil Appeal No.362/2015, thereby allowing amendment in plaint to incorporate additional suit properties.
3. The respondent nos.1 to 5/original plaintiffs instituted Regular Civil Suit No.136/1995 against petitioners and others seeking decree

of partition and separate possession. The defendants refuted claim of petitioners by filing independent written statements.

4. The Trial Court framed issues based on pleading of parties. The Issue No.1-C was framed as to “*whether suit is bad for not bringing all properties in common hotchpotch*”, which has been answered in affirmative, resulting into dismissal of suit.

5. Aggrieved plaintiffs filed Regular Civil Appeal No.362/2015 before District Judge at Kolhapur. When Appeal was pending for final hearing, plaintiffs filed application below Exhibit-76 seeking permission to amend plaint and include agriculture land situated at village Kodoli and Bahirewadi in claim clause. The defendants opposed application firstly on ground that amendment is proposed after 27 years of institution of suit. The defendants had raised objection in written statement regarding non-joinder of properties. However, plaintiffs contested said objection in suit. Ultimately, suffered dismissal of suit for not bringing all properties in common hotchpotch. The plaintiffs cannot be permitted to cure defect at appellate stage. The application sans reasons for inordinate delay in bringing amendment application at appellate stage. Because of inaction on the part of plaintiff at early stage of suit, rights have been accrued in favour of defendants. The claim to the extent of properties proposed to be added in plaint is time barred. The District Judge

after considering rival contentions, allowed application vide impugned order dated 01.07.2023.

6. Mr. Chetan Patil, learned Advocate appearing for petitioners would submit that defendants had raised objection regarding not bringing all properties in common hotchpotch in written statement. The Trial Court had framed issue as to whether suit is bad on that count. The plaintiffs were sufficiently noticed of aforesaid objection. Still they carried forward their case that plaintiff no.1 became sole owner of land excluded. The Trial Court negated plaintiffs contention and observed that those properties continued to be joint family properties and failure of plaintiffs to bring those properties in common hotchpotch is fatal to suit. Mr. Patil would further submit that plaintiffs filed Appeal in year 2015 and presented application for amendment after 8 years, when Appeal was at the stage of final hearing. The plaintiffs cannot be permitted to cure defect at this stage, particularly ignoring rights accrued in favour of defendants. Mr. Patil would rely upon observations of this Court in cases of *Sasa Detergent Division Vs. Damodar S. Mudliyar and Others*¹ and *Yovel Kumar and Others Vs. Anand Kumari and Others*².

7. Per contra, Mr. Rushikesh Patil, learned Advocate appearing for respondents would submit that suit is instituted for relief of partition

1 2012 (2) Mh.L.J. 15.

2 2025 SCC OnLine Chh 2133.

and separate possession. The defendants took objection of non-joinder of all joint family properties in claim. The plaintiffs were asserting their independent rights in respect of some of properties. However, Trial Court recorded finding that part of Survey No.8/6, which is subsequently numbered as land Block No.28B is also part of joint family property and dismissed suit holding that suit is bad for non bringing said property in common hotchpotch. The plaintiffs want to add said property in claim clause, so as to bring finality to litigation or avoid multiplicity. No prejudice would be caused to plaintiffs due to grant of permission to amend suit at appellate stage. In support of his contentions he relies upon observations Supreme Court in following cases:

1. *Pankaja and Another Vs. Yellappa (Dead) by Lrs. and Others*³.
2. *Ragu Thilak D. John Vs. S. Rayappan and Others*⁴.
3. *Hindustan Lever Ltd. Vs. Director General (investigation & Registration) and Another*⁵.
4. *Mahila Ramkali Devi and Others Vs. Nandram (D) Thr. Lrs. and Others* (Civil Appeal No.2366/2010 decided on 14.05.2015)
5. *Hifjur Rahman Ors. Vs. Jaibun Nisha & Ors*⁶.
6. *Sheo Pujan Rai and ors. Vs. Ram Ekbal Rai and Ors*⁷.

3 (2004) 6 SCC 415.

4 (2001) 2 SCC 472.

5 (2001) 2 SCC 474.

6 (2009) 80 AIC 748.

7 AIR 2008 PATNA 50.

7. *Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited.*⁸

8. Having considered submissions advanced by learned Advocates appearing for respective parties and on perusal of material tendered into service, contentious issue that arises for consideration in this Writ Petition is as to whether Appellate Court is justified in allowing amendment in plaint at appellate stage, particularly pertaining to non-joinder of property, which was raised by defendants in written statement and decided by Trial court by framing issue in this regard.

9. The respondents instituted suit for partition and separate possession. The defendants took specific objection in written statement that all properties of joint family are not brought in common hotchpotch. From pleading and contentions of parties, it can be gathered that Survey No.8/6 was ancestral property of plaintiffs and defendants, which was subsequently divided in Block Nos.28-A and 28-B. The plaintiffs while claiming decree of partition and separate possession of joint family properties, asserted their exclusive rights in Block No.28-B and sought partition in respect of Block No.28-A. The Trial Court while deciding aforesaid controversy recorded findings that entire Survey No.8/6 was ancestral property and plaintiffs could not establish their exclusive title over Block No.28-B. Eventually, held that non-bringing of Block No.28-B in

⁸ AIR 2022 SC 4256.

common hotchpotch would amount to non-joinder of property and entail dismissal of suit. Pertinently, Trial Court recorded finding that suit properties are ancestral and common properties of plaintiffs and defendants and there is no previous partition. In deference to finding, suit for not bringing of those properties in common hotchpotch. The plaintiffs have filed Appeal against aforesaid decree and during pendency of Appeal, filed an application seeking amendment to incorporate property bearing Gut No.28-B as suit property. Apparently, findings of Trial Court that land Block No.28-B is joint family property, triggered plaintiffs to add the same as suit property. Obviously, reason for bringing such an amendment is to get rid of objection of defendants.

10. In this backdrop, it would be apposite to refer observations of Patna High Court in case of ***Sheo Pujan Rai*** (supra). In that case, preliminary decree for partition and separate possession was passed on 12.07.1969. Thereafter, on 01.03.2006, plaintiffs filed amendment petition for adding some more land in schedule of plaint for which partition was sought. It was opposed by defendants on the ground that amendment is sought belatedly after 42 years. In this backdrop, Patna High Court observed in paragraph no.10 as under:

“It further transpires that the plaintiff-opposite parties were seeking addition of the properties, which were, admittedly, joint ancestral properties and were covered under the same set of facts, which have already been decided by the learned trial court at the time of passing of the preliminary decide all

the relevant aspects of the matter have been considered by the learned court below while passing the impugned order and it has rightly found that it would neither change the nature of the suit nor it would take other side by surprise and, on the other hand, such addition deems necessary to settle the controversy as a whole and prevent any multiplicity of the suits and proceedings.”

11. Similarly in case of ***Usha Balashaheb Swami and Ors. Vs. Kiran Appaso Swami and Ors.***⁹ relying upon observations of Privy Council in case of ***Ma Shwe Mya Vs. Maung Mo Hnaung***¹⁰, Supreme Court has observed as under:

“All rules of courts are nothing but provisions intended to secure the proper administration of justice and it is, therefore, essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised, but nonetheless no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change by means of amendment, the subject-matter of the suit.”

12. The exposition of law discerning from aforesaid two judgments of Supreme Court would reveal that powers of Court to permit amendment are vast subject to rider that it should not change nature of dispute or cause of action. The court has to bear in mind that technicalities shall not defeat ends of justice and also shall not generate multiplicity of litigation. In present case, plaintiffs are merely seeking amendment for adding one more land in schedule of plaint for which partition is sought. Pertinently, respondents are also claiming that aforesaid property is part of joint family property and

⁹ (2007) 5 SCC 602.

¹⁰ AIR 1922 PC. 249.

there is no previous partition between them. Eventually, issue as to partition and separate possession of aforesaid property can be decided in present suit.

13. Second objection to permitting amendment is as to stage of proceeding. It is true that, plaintiffs are seeking amendment at appellate stage. However, fact remains that plaintiffs were asserting case that property Block No.28-B is exclusively allotted to them, which has been negated by Trial Court. Obviously, in wake of aforesaid findings, amendment is sought at appellate stage. Therefore, plaintiffs had no option than to seek amendment at appellate stage. In such case, delay in bringing application for amendment cannot be said to be fatal, particularly when Court finds that such an amendment would be necessary to avoid multiplicity of litigation.

14. Third contention raised on behalf of petitioner is that dismissal of suit for not bringing of property in common hotchpotch has created right in favour of defendants, which cannot be frustrated by allowing amendment. However, such contention cannot be accepted. It is true that, petitioners/respondents raised objection for not bringing properties in common hotchpotch in their written statement and issue framed on the basis of such objection has been decided in their favour, but such decision is on the basis of findings recorded by Trial

Court that plaintiffs could not be established their independent right in land Block No.28-B, which is not brought in common hotchpotch. The said finding is subject matter of consideration in Appeal before District Judge. However, Appeal being continuation of suit, plaintiffs can give up any contention and seek amendment, so as to bring finality to litigation.

15. Although Mr. Patil relies upon decision of this Court in case of ***Sasa Detergent Division*** (supra), in that case situations are clearly distinguishable on facts. In that case, amendment was sought for correction of description of suit property as well as for incorporating prayer to challenge deed of conveyance executed in the year 2007 by defendants no.1 in favour of defendant no.5. The Court held that in that case amendment would be time barred, as plaintiff was aware about transaction between defendant nos.1 and 5 since 1997, whereas amendment is brought in the year 2007 and, therefore, relief would be time barred. In case of ***Yovel Kumar and Others*** (supra), it was case of non-joinder of necessary party. The High Court of Chhattisgarh expressed view that objection as to non-joinder of parties, which was raised in written statement cannot be permitted to be rectified at appellate stage, particularly when suit has been dismissed accepting such objection. However, in present case, respondents want to add property Gut No.28-B in claim clause. Therefore, objection as to whether relief sought in respect of property

to be added by way of amendment is barred by limitation can be decided by Appellate Court at the time of hearing of Appeal on the basis of facts and material already on record. This Court finds that amendment as claimed would be necessary to finally decide controversy between parties, so also to avoid multiplicity of litigation.

16. In that view of matter, discretion exercised by Appellate Court need not be disturbed in exercise of Writ jurisdiction of this Court. In result, Writ Petition stands dismissed.

17. Rule stands discharged.

(S.G. CHAPALGAONKAR)
JUDGE