

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 14906 OF 2024**

Vilas Panditrao Deshmukh

..Petitioner

Versus

Shivaram Gangaram Yadav Alias Mali & Ors

...Respondents

Mr. Nilesh Wable, for the Petitioner.

CORAM: N. J. JAMADAR, J.

DATED : 6th FEBRUARY 2025

P.C.:

1. Heard learned Counsel for the Petitioner.
2. The challenge in this Petition is to an order dated 19th September 2024 passed by the learned Civil Judge, Atpadi, whereby an Application for amendment in the Complaint was allowed after the parties advanced submissions and written arguments were filed, so as to add the words “and be cancelled” in prayer clause (B) of the Complaint.
3. The Respondents have instituted the Suit for declarations that the Respondents have a preferential right to purchase the portion of the suit land and the Sale Deed executed and registered on 26th September 2016 is null and void and not binding on the Respondents-Plaintiffs.

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4. After the parties led evidence and arguments were canvassed, the Plaintiffs filed an Application asserting that inadvertently words “and be cancelled” remained to be added in the prayer clause (B) of the Plaint, which read as under:

“(B) It be declared that the sale deed registered at Sr. No. 1172 of 2016 dated 26/09/2016 in the Office of Sub Registered, Atpadi is null and void and not binding on the Plaintiffs.”

5. The Application was resisted.

6. By the impugned order the learned Judge was persuaded to allow the Application observing that the proposed amendment neither changes the nature of the Suit nor would it cause prejudice to the Defendants. The amendment is necessary for determination of the questions in controversy and to avoid multiplicity of proceedings.

7. The learned Counsel for the Petitioner submits that the learned Civil Judge could not have allowed the Application for amendment when the trial was concluded and even written submissions were filed. The cause ascribed in the Application for amendment was that after perusal of the written submissions, the Plaintiffs realised that there was an inadvertent omission in seeking the relief of cancellation of instruments.

8. I have carefully perused the averments in the Plaint and the impugned order passed by the learned Civil Judge. The suit has been

instituted asserting a preferential right to purchase the portion of the suit property and, in that context, a declaration is sought that the Sale Deed executed in favour of the Defendants is null and void and not binding on the Plaintiffs.

9. The proposed amendment to add the words “and be cancelled” is essentially consequential to the prayers in terms of prayer clause (B). By no stretch of imagination, can it be said that the proposed amendment either changes the nature of the suit or takes away any right vested in the Defendants. It is also trite that, even in the absence of such a prayer, the civil court is not precluded from granting such consequential relief if it comes to the conclusion that instrument in question is null and void and is required to be so declared, delivered up and cancelled.

10. Therefore, the learned Civil Judge does not seem to have committed any error in allowing Plaintiffs to amend the Plaint.

11. Petition stands dismissed.

12. However, the issue of limitation qua the prayer for an order of cancellation of the instrument is kept open for consideration.

[N. J. JAMADAR, J.]