

VRJ

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8308 OF 2025

VAIBHAV
RAMESH
JADHAV

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VAIBHAV RAMESH
JADHAV
Date: 2025.10.08
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- 1 Pandurang Bhagwan Patil
Age : 61 years, Occu. - Agriculture,
 - 2 Krushnath Bhagwan Patil,
Age: 57 years, Occu. - Agriculture,
 - 3 Madhukar Vyankat Patil,
Age: 57 years, Occu. - Agriculture,
 - 4 Vilas Vyankat Patil,
Age: 61 years, Occu. - Agriculture
 - 5 Dinkar Vyankat Patil,
Age: 51 years, Occu. - Agriculture,
 - 6 Baburao Yahswant Patil, (Deceased)
 - 6A Shalabai Baburao Patil,
Age 70 years, Occu. - Agri. & Household
 - 6B Krushnat Baburao Patil,
Age 54 years, Occu. - Service & Agri.
 - 6C Ashok Baburao Patil,
Age: 50 yuears, Occu. - Agriculture,
- 6A to 6C, All resident of Bhadole, Tal. -
Hathkanangale, Dist. - Kolhapur.
7. Shamrao Daji Patil,
Age: 76 years, Occu. - Agriculture,
- All 1 to 7 are R/o. Bhadole, Tal. -
Hathkanangale, Dist. Kolhapur.

... Petitioners

V/s.

Shivaji Krushnath Patil,
Age: 35 years, Occu.- Agriculture,
R/o. Bhadole, Tal.-Hathkanangale,
Dist. Kolhapur

... Respondent

Mr. N. J. Patil i/by Mr. Akshay N. Patil for the
petitioners.

Mr. Prajakt M. Arjunwadkar with Mr. Dhananjay A.
Utture, C. S. Sankpal and Mr. Ritesh R. Raut for the
respondent.

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : OCTOBER 3, 2025

PRONOUNCED ON : OCTOBER 7, 2025

JUDGMENT:

1. The petitioners, being original plaintiffs, approach this Court
with following prayer:

“(b) that this Hon’ble Court after going into the legality,
validity and propriety of the impugned Judgment and Orders
dated 20th September, 2023 (Ex. ‘A’) passed at Exhibit ‘35’
and the Order (Ex. ‘B’) passed at Exhibit ‘37’ respectively in
Regular Civil Suit No. 26 of 2022 passed by the Learned 2nd
Joint Civil Judge, Junior Division, Pethvadgaon be pleased to
quash and set aside the same and further be pleased to allow
the amendment application at Ex. 37 entirely;”

2. The petitioners – original plaintiffs instituted Regular Civil

Suit No. 26 of 2022 before Civil Court, Junior Division, Pethvadgaon, seeking a decree of perpetual injunction. The plaintiffs had claimed that they are tenants in suit property. Eventually, they are entitled to ownership rights under Section 32G of the Maharashtra Tenancy and Agricultural Lands Act, 1948. However, the defendant is obstructing their possession over suit property. Defendant refuted plaintiffs' claim by filing a written statement and denied claim of plaintiffs. Defendant filed an application below Exhibit-35 seeking to frame an issue of tenancy and reference thereof to competent authority under Maharashtra Tenancy and Agricultural Lands Act, 1948. The Trial Court allowed application on 20th September 2023, looking to the pleadings and contentions of parties, and made a reference under Section 85A of Maharashtra Tenancy and Agricultural Lands Act, 1948, to the competent authority.

3. The plaintiffs filed an application below Exhibit-37 under Order VI Rule 17 of Civil Procedure Code, 1908, seeking permission to amend the plaint. The amendment was sought particularly in paragraph Nos. 3, 4, and 5 of plaint. The petitioners sought to withdraw contention that the plaintiffs are in possession

as tenants or that they were entitled to the benefit under Section 32G. Apart from that plaintiffs sought to raise claim that the land in question had been regranted in name of Govinda under the provisions of the Inam Abolition Act. Eventually, Tahsildar affirmed mutation entry in RTS No. 21 of 1980.

4. The defendant opposed plaintiffs' application on the ground that amendment seeks withdrawal of the case pleaded and an introduction of an altogether different case. The Trial Court, after considering the rival contentions, partly allowed the application filed below Exhibit-37. The plaintiffs were permitted to add names of Govinda, Ramchandra, Krushant, Shivaji, and Chaya in the plaint, whereas the Court rejected the plaintiffs' prayer to delete the stipulations regarding the claim based on tenancy rights and addition of claim over suit property based on regrant under Inam Abolition Act.

5. Mr. N. J. Patil, learned advocate appearing for the petitioners, vehemently submits that plaintiffs and defendant originally belongs to the same family. Apparently, the plaintiffs cannot have a claim over the suit land as tenants. However, since they were not in possession of the requisite documents, they

pleaded a right over the property as tenants. In fact, they are entitled to claim rights over the property on the basis of regrant under the Inam Abolition Act. The petitioners, therefore, applied for necessary amendment, seeking permission to amend pleadings and delete particulars as to tenancy, and to put forth claim on the basis of regrant under the Inam Abolition Act. The plaintiffs have recently received copies of the relevant orders passed by the competent authority.

6. Mr. Arjunwadkar, learned advocate appearing for respondent, supports the impugned order. According to him, petitioners want to replace entire plaint and introduce a completely new case. The Trial Court has rightly appreciated contents of proposed amendment and refused to entertain clauses which are beyond jurisdiction of Court under Order VI Rule 17 of Civil Procedure Code, 1908.

7. At this stage, Mr. N. J. Patil, learned advocate appearing for petitioners, on instructions from petitioner No. 1 – Pandurang Bhagwan Patil, and petitioner No. 2 – Krushnath Bhagwan Patil, who are personally present in Court, submits that if the petitioners are permitted to delete particulars of pleading as to tenancy, they

would not press for proposed amendment as per clause 5(A) of application filed below Exhibit-37. However, he urges that petitioners may be given liberty to rely upon the orders passed by revenue authorities under provisions of the Inam Abolition Act.

8. Having considered the submissions advanced by learned advocates appearing for respective parties, it can be observed that suit is instituted for relief of injunction. Initially, plaintiffs and defendant have asserted respective possession over the property. The plaintiffs asserted their right in suit property under provisions of the Maharashtra Tenancy and Agricultural Lands Act, 1948. However, by way of proposed amendment, they want to withdraw such contentions, giving reason that they were not equipped with requisite documents at the time of drafting plaint. In this background, when suit is at the pre-trial stage, if plaintiffs are permitted to withdraw their claim as to tenancy, no prejudice would be caused to defendant. Since suit is for the relief of injunction, it is for plaintiffs to prove their possession over suit property.

9. Since plaintiffs have not pressed proposed amendment in clause No. 5(A) as shown in the amendment application, there

would be no impediment in permitting plaintiffs to delete their pleading asserting tenancy rights. However, plaintiffs would be at liberty to establish their possession on the basis of revenue records or orders passed by competent authorities, depicting their continuous possession as claimed.

10. In that view of the matter, order of Trial Court passed below Exhibit-35, thereby framing issue of tenancy and consequential reference to the competent authority, will have to be quashed and set aside, as the dispute in suit would be restricted to possession over suit property, without any claim as to tenancy right on behalf of plaintiffs.

11. In that view of the matter, writ petition is partly allowed.

12. Impugned order dated 20th September 2023, passed below Exhibit- 35, is quashed and set aside.

13. Impugned order dated 20th September 2023, passed below Exhibit- 35, is modified.

14. The petitioners shall be entitled to amend their plaint as proposed in paragraph Nos.4, 5 and 6 of amendment application.

15. Claim for proposed amendment as per Clause 5(A) stands

rejected being not pressed.

16. Necessary amendment to be carried out within a period of four weeks from today.

17. The Trial Court shall endeavour to decide suit expeditiously and, in any case, within a period of one year from today.

18. Parties to cooperate to early disposal of suit.

19. Pending interlocutory application(s), if any, stand disposed of.

(S. G. CHAPALGAONKAR, J.)