

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 846 OF 2025

VISHAL
SUBHASH
PAREKAR

Digitally signed by
VISHAL SUBHASH
PAREKAR
Date: 2025.01.27
19:02:54 +0530

Guruvva @ Gurubai Malappa Revur
(Deceased) through legal heir

...Petitioner

vs.

Gangavva @ Shanta Dhanppa Ankalgi and Ors.

...Respondents

Mr. Amit Sale, for the Petitioner.

Mr. Sarthak Diwan a/w. Mr. Snehal Jadhav, for Respondent No.1.

CORAM : N. J. JAMADAR, J.

DATE : JANUARY 23, 2025

P.C:

1. Heard the learned counsel for the petitioner.
2. This petition assails an order dated 16th October, 2024 passed by learned Civil Judge in RCS No.35 of 2009 whereby an Application (Exh. 93) for amendment in plaint under Order VI Rule 17 of the Code of Criminal Procedure, 1908, preferred by the petitioner, came to be rejected.
3. Smt. Guruvva, the deceased/plaintiff, sought partition and separate possession of her share in the joint family property asserting, inter alia, that she was the legally wedded wife of Malappa, the father of defendant No. 1 and uncle of defendant Nos. 2 to 5. Guruvva claimed her marriage was solemnized with Malappa after demise of Basavva, the mother of defendant No. 1.
4. Guruvva passed away. The petitioner came to be impleaded as

legal representative of Guruvva. The petitioner filed an application for amendment in the plaint seeking to elaborate the claim of Guruvva that she was the legally wedded wife of Malappa.

5. By the impugned order, the learned Judge declined permission to amend the plaint observing, inter alia, that the instant suit and the companion suit, bearing RCS No. 21 of 2009, were instituted in the year 2009. Various orders were passed therein and the matters were carried up to this Court, and the suits were ripe for hearing. Therefore, the interdict contained in the Order VI Rule 17 came into play. The petitioner failed to satisfy that, despite due diligence the petitioner could not have raised the matter before the commencement of the trial. Even otherwise, there were adequate pleadings in the plaint to determine the real question in controversy between the parties.

6. Mr. Sale, the learned counsel for the petitioner, submitted that the proposed amendment was by way of elaboration of the facts which were already pleaded. No prejudice as such would be caused to the defendants by amending the plaint. The learned Judge took a very hypertechnical view of the matter. Once it was held that there were already adequate pleadings, the learned Civil Judge could not have rejected the application as the proposed amendment was in the nature of elaboration of the case already pleaded.

7. I am unable to accede to the aforesaid submission of Mr. Sale. First and foremost, the proposed amendment pertains to the claim of solemnization of marriage of Guruvva, the deceased plaintiff with Malappa. If that was the case, the deceased plaintiff was the best person to make the factual assertions with regard to the said marriage. From a bare perusal of the application it becomes abundantly clear that the application came to be preferred after the demise of Guruvva with a claim that the amendment was sought on the basis of information furnished by Guruvva as regards her marriage.

8. Secondly, the application does not contain any reason for not seeking the amendment before the commencement of the trial. It is trite, post insertion of the proviso to Order VI Rule 17, the Courts power to permit the amendment in the pleading, after the commencement of the trial, is conditioned upon the satisfaction that, despite due diligence, the party could not have raised the matter before the commencement of the trial. Unless such condition is satisfied, there is an express embargo on the power of the Court to permit the amendment.

9. A useful reference, in this context, can be made to the decision of the Supreme Court in case of **Vidyabai and Others vs. Padmalatha and Another**¹. The legal position was expounded as

¹(2009) 2 SCC 409

under:-

10] By reason of the Civil Procedure Code (Amendment) Act, 2002 (Act 22 of 2002), Parliament inter alia inserted a proviso to Order 6 Rule 17 of the Code, which reads as under :

“Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial.”

It is couched in a mandatory form. The Court’s jurisdiction to allow such an application is taken away unless the conditions precedent therefor are satisfied viz. it must come to a conclusion that in spite of due diligence the parties could not have raised the matter before the commencement of the trial.

.....

19] It is the primal duty of the court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, proviso appended to Order VI, Rule 17 of the Code restricts the power of the court. It puts an embargo on exercise of its jurisdiction. The court’s jurisdiction, in a case of this nature is limited. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the court will have no jurisdiction at all to allow the amendment of the plaint.

The aforesaid judgment was followed with the approval in the cases of **Pandit Malhari Mahale vs Monika Pandit Mahale²** and **P.A.Jayalakshmi vs H.Saradha & Ors.³**

10. No interference is thus warranted in exercise of supervisory jurisdiction especially when the suits are posted for hearing.

11. I am, therefore, inclined to dismiss the petition.

12. The petition stands dismissed.

(N. J. JAMADAR, J.)

² (2020) 11 SCC 549.

³ AIR2009 SC 232