

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1378 OF 2025

Vishwas Ramchandra Dhale and ors. ...Petitioners

Versus

Anand Balwant Dhale and ors. ...Respondents

Mr. Manoj Patil, a/w Shubham Dhenge, for the Petitioners.

CORAM: N. J. JAMADAR, J.
DATED: 4th FEBRUARY, 2025

ORDER:-

1. The challenge in this petition is to an order dated 31st August, 2024 passed by the learned District Judge, Jaysingpur, on an application (Exhibit-52) preferred by the petitioner – appellant in Regular Civil Appeal No.75 of 2011.

2. Respondent No.1 had instituted a suit for partition and separate possession of his ½ share in the suit property. It was, *inter alia*, asserted that Balwant, the deceased father of the plaintiff, was allotted the suit property for an occupancy price of Rs.40/-. Vishwas Dhale, defendant No.1, was the brother of Balwant. Kamlakar – defendant No.2 was the brother of the plaintiff. Defendant Nos.3 and 4 were put in possession of portions of the suit property by defendant No.1, unlawfully. Upon being called upon to give peaceful and

vacant possession of the plaintiff's share, the deceased defendant No.1 declined to give the share of the plaintiff in the suit property. Hence, the suit for partition and separate possession.

3. The said suit came to be decreed by a judgment and order dated 26th September, 2011. The trial court returned a finding that the plaintiff succeeded in establishing that the plaintiff has $\frac{1}{2}$ share in the suit property and was thus, entitled to partition and separate possession of his $\frac{1}{2}$ share.

4. The deceased defendant No.1 – predecessor-in-title of the petitioners preferred an appeal. In the said appeal, an application for amendment in the written statement was preferred contending, *inter alia*, that out of the suit property defendant Nos.3 and 4 were in the occupation of six rooms in the capacity of the tenants thereof and the suit was not maintainable before the Civil Court as they were entitled to the protection of the Maharashtra Rent Control Act.

5. By the impugned order, the learned District Judge was persuaded to reject the application observing, *inter alia*, that suit is for partition and separate possession of the subject property. The defendant No.1 had *inter alia* contended that the defendant No.1 had perfected his title over the suit

property by way of adverse possession. The appeal was preferred in the year 2011. Yet the application for amendment came to be filed on 8th January, 2024. Thus, the application for amendment did not merit acceptance.

6. Mr. Patil, the learned Counsel for the petitioners, submitted that dehors the aspect of delay, the learned District Judge ought to have considered the application for amendment on the touchstone of well recognized principles. The proposed amendment does not change the nature of the defence as it was the case of the plaintiff that the defendant Nos.3 and 4 were in the occupation of the portions of the suit property through defendant No.1. Therefore, the amendment in the written statement ought to have been allowed.

7. The submission does not merit countenance. The nature of the possession of defendant Nos.3 and 4 over the portion of the suit property was not a matter which was required to be adjudicated for the determination of the issues which arose in the suit for partition and separate possession. As noted above, the defendant No.1 had raised the defence of perfection of title by way of adverse possession. Conversely, the defendant Nos.3 and 4 did not raise the defence of tenancy and protection under the Rent Act. The proposed

amendment was thus of such nature that it would completely alter the nature and character of the defence and would also lead to multifariousness. At any rate, the application for the proposed amendment in the written statement was made belatedly, even before the Appeal Court. Thus, this Court does not find any infirmity in the impugned order.

8. The petition thus stands dismissed.

[N. J. JAMADAR, J.]