

rrpillai

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12 OF 2024**

1. Jeevan Bhupal Pakhare

Age : 47, Occ : Business

R/o. 2909/87, Subhash Nagar

B Ward, Kolhapur.

2. Ganesh Bhupal Pakhare

Age : 43, Occ : Household

R/o. As above

... Petitioners

Vs.

1. Kolhapur Municipal Corporation

through its Commissioner Office at

Kolhapur Municipal Corporation.

2. Department of Encroachments

Kolhapur Municipal Corporation

3. Paschim Maharashtra Devasthan

Vyavasthapan Committee

Through its President

Office at – Ground Floor

Balbhim Bank, Varuntirtha Vesh

Shivaji Peth, Kolhapur

... Respondents

Mr. Bhooshan R. Mandlik for the Petitioners.

Mr. Abhijit Adagule a/w. Ms. Ketaki Patil for Respondent Nos.

1 and 2.

Mr. Sanjiv A. Sawant a/w. Ms. Bhakti Wast i/b. Mr. Samir M.

Suryavanshi for Respondent No.3.

CORAM : GAURI GODSE, J.

DATE : 17th JUNE 2025

ORDER :

1. Pursuant to the notice issued by this court, the petition is taken up for final disposal. Heard learned counsel for the parties.

2. This petition is filed by the original plaintiffs. The impugned order rejects two separate applications for carrying out the amendment to the suit in view of the developments during the pendency of the suit.

3. Learned counsel for the petitioners submits that the suit for injunction restraining the defendants from removing the suit property, described as a shoe stand in the temple, was filed on 23rd August 2023. He submits that during the pendency of the suit, the suit property was removed. Hence, the petitioners filed an application at Exhibit-26 on 10th October 2023 to amend the plaint for seeking a mandatory injunction to restore the suit property and also prayed for adding supporting pleadings. He submits that immediately on the next date, the petitioners filed one more

application at Exhibit-29 for leave to amend the description of the suit property by clarifying the location of the suit property, which was originally described in the suit. He submits that these amendments were sought at the initial stage of the suit, when the suit is still pending for hearing on interim relief.

4. Learned counsel for the petitioners submits that the learned Judge has rejected the applications on unreasonable grounds by examining the contentions raised by the defendant on the merits of the proposed amendment. He submits that in view of the well-settled legal principles, there was no reason to reject the application for amendment, which was prayed in view of the subsequent events that occurred during the pendency of the suit. He therefore submits that the petition be allowed, and the plaintiffs be permitted to carry out the amendments as prayed in both applications.

5. Leaned counsels appearing for the respective defendants vehemently oppose the petition. They submit that in the earlier round of litigation, the plaintiffs' father had filed a suit seeking relief in respect of the same suit property, which has been removed. They rely upon orders passed in

the earlier round of litigation deciding applications for interim relief, which were confirmed up to this court.

6. Learned counsel for the corporation submits that the corporation has removed the suit property by issuing a notice dated 28th September 2023. Learned counsels for the respective respondents rely upon the copy of the notice annexed to the affidavit in reply filed by them. Learned counsels for the respective respondents therefore submit that since the suit property is already removed by the corporation, the plaintiffs are required to file a substantive suit, and they are not entitled to seek relief of amendment in pending suit. Learned counsels for the respondents, therefore, oppose the grant of any relief to carry out the amendment to the plaint as prayed by the plaintiffs.

7. I have perused the papers of the writ petition. In paragraph 1 of the plaint, the plaintiffs described the suit property with measurements, stating that it is situated near the Garud Mandap and measures 5 feet by 20 inches long and 6.5 feet high. The prayer in the suit was for an injunction restraining the respondents from illegally removing the suit property without following due process of law.

8. The first application for amendment at Exhibit-26 was filed on 10th October 2023, contending that on 10th October 2023, the corporation removed the suit property. Hence, the plaintiffs prayed for a mandatory injunction to restore the suit property. The proposed amendment contains pleadings to support the prayer for a mandatory injunction. The second application at Exhibit-29 was filed on 11th October 2023, seeking to amend the description in paragraph 1 of the plaint. The description of the suit property is sought to be clarified by amending paragraph 2 by stating that the suit property is on the southern side door of the temple.

9. The applications are opposed by the respondents mainly on the ground that the description of the suit property is sought to be changed, and the proposed amendment would also change the cause of action in the suit.

10. The learned Judge considered the objections raised on behalf of the respondents and rejected the applications, observing that the additions sought to be made in the suit would amount to a change in the nature of the suit and a change in the prayer of the suit. The learned Judge also observed that the second application was filed even without

waiting for the decision of the first application.

11. A perusal of the pleadings and the proposed amendments indicates that the plaintiffs have sought leave to add prayers and supporting averments in view of the subsequent event of the removal of the suit property. The prayer for amending the paragraph for description of the suit property amounts to further clarification of the description of the suit property. There is no dispute that the corporation has removed the suit property on 10th October 2023. The respective affidavit-in-reply filed by the respondents indicates that the corporation issued notice on 28th September 2023, which is a show cause notice to the plaintiffs for the removal of the suit property. However, it appears that without waiting for the show cause period of 15 days, the corporation removed the suit property on 10th October 2023. Thus, in view of the subsequent development, the plaintiffs have prayed to add the prayer and supporting averments in the pending suit, seeking amendment due to the cause of action that arose during the pendency of the suit. There is no impediment if the prayer for amendment is allowed, which is with respect to the same suit property. So far as the second

amendment for the clarification in the description of the suit property is concerned, it is always open for the defendants to file their additional written statement and raise appropriate grounds on the merits of the amendment. The objection raised on behalf of the respondents pertaining to the merits of the proposed amendment is no ground to reject the prayer for amendment.

12. The reasons recorded by the learned Judge in the impugned order would amount to rejecting the application for amendment on hyper-technical grounds by ignoring the well-settled legal principles. The relief sought by the plaintiffs is only leave to amend the plaint in view of the subsequent development. Hence, the applications cannot be rejected based on the objections raised on the merits of the proposed amendments.

13. Hence, for the reasons recorded above, the petition is allowed by passing the following order :

- (i) The impugned orders dated 19th October 2023 passed by the 5th Joint Civil Judge, Senior Division, Kolhapur, below Exhibits 26 and 29 in RCS No. 815 of 2023 are quashed and set aside.

(ii) Applications at Exhibits 26 and 29 are allowed, and the plaintiffs are permitted to carry out the amendment. The plaintiffs shall carry out the amendment within six weeks from today.

(iii) Needless to clarify that, the defendants would be entitled to file their additional written statement in response to the amended plaint.

(iv) Writ Petition is allowed in the aforesaid terms.

[GAURI GODSE, J.]

RAJESHWARI
RAMESH
PILLAI

Digitally
signed by
RAJESHWARI
RAMESH
PILLAI
Date:
2025.06.19
00:24:01
+0200