

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11276 OF 2024

1. Shankar Kachru Handge,
Age: 76 years, Occ: Agriculture

2. Mirabai Shankar Handge,
Age: 69 years, Occ: Agriculture

3. Sandeep Shankar Handge
Age: 76 years, Occ: Agriculture
Nos. 1 to 3, r/at: Chatori,
Tal. Niphad, Dist. Nashik.

..Petitioners

Versus

1. Vijay Khandrao Pawar
Age: 62 years, Occ: Agriculture

2. Aditya Ashok Pawar
Age: 31 years, Occ: Agriculture

3. Ujwala Vijay Pawar
Age: 54 years, Occ: Agriculture
All R/A, Chatori,
Tal. Niphad, Dist. Nashik.

...Respondents

Mr. Suresh M. Sabrad, with Neha Zanje and Gracy Saldanha, i/b
Pratik Sabrad, for the Petitioner.

Mr. Girish R. Agarwal, with Naina P. Boraste, for Respondent Nos. 1 to
3.

CORAM: N. J. JAMADAR, J.

DATED : 23rd APRIL 2025

ORAL JUDGMENT:

1. Heard the learned Counsel for the parties.

2. Having regard to the nature of the dispute, Rule. Rule made returnable forthwith and with the consent of the learned Counsel for the parties, heard finally at the stage of admission.

3. The challenge in this Petition is to an order dated 24th June 2024 passed by the learned Civil Judge, Senior Division, Niphad, on an Application for amendment in the Plaint (Exhibit “26”), whereby the said Application came to be rejected.

4. The Petitioners-Plaintiffs have instituted a Suit for specific performance of a contract to sell the property of which the Plaintiffs were allegedly in unlawful occupation, declaration and injunction, based on a verbal Agreement for Sale. It is the case of the Plaintiffs that on 14th February 2020 there was a verbal Agreement for Sale of the suit property and pursuant thereto the Plaintiffs have parted with consideration.

5. By filing an Application (Exhibit “26”), the Plaintiffs sought to incorporate averments in the Plaint to the effect that there was encumbrance on the suit property to the tune of Rs.4,79,000/- and Defendant No.1 had agreed to clear the said encumbrance, and, have the measurement of the property, demarcate the boundaries and thereafter execute the Sale Deed. Instead, in breach of the said contractual obligations, Defendant No.1 executed an instrument on 13th

October 2023 in favour of his wife and Defendant No.2, Aditya Pawar. Hence, there was refusal to perform the contract from the date of the execution of the said instrument in favour of the wife of Defendant No.1, and Defendant No.2.

6. By the impugned order, the learned Civil Judge was persuaded to reject the Application observing *inter alia* that the case sought to be pleaded by way of amendment was never pleaded in the original Plaint. Nor there was any document to substantiate the claim of the Plaintiff as was sought to be incorporated by way of amendment.

7. Mr. Sabrad, the learned Counsel for the Petitioners, submitted that the learned Civil Judge approached the controversy from a completely incorrect perspective. At the stage of consideration of an Application for amendment in the pleading, the Court is not expected to delve into the merits of the matter. The impugned order thus deserves to be interfered with.

8. Mr. Agrawal, the learned Counsel for the Respondents, endeavoured to support the impugned order. It was submitted that the Suit is based on a verbal Agreement for Sale. In fact, the Plaintiffs were found to have committed encroachment over the property of the Defendant. To pre-empt action of removal of encroachment and eviction from the encroached portion, the Plaintiffs have filed a Suit based on the alleged verbal Agreement for Sale. The case now sought to be

pleaded by way of amendment was not asserted in the Complaint originally filed, even remotely. Therefore, the learned Civil Judge cannot be said to have committed any error in rejecting the Application for amendment.

9. I have perused the averments in the Complaint and the text of the draft amendment sought to be incorporated by way of amendment in the Complaint. Admittedly, the Suit is for specific performance of verbal Agreement for Sale. The learned Civil Judge was persuaded to reject the Application as there was no trace of the case sought to be incorporated by way of amendment in the Complaint and no document to substantiate the said claim. The learned Civil Judge, thus, entered into the merits of the matter and found that there is no reason to allow the amendment.

10. The learned Civil Judge has applied an incorrect test in rejecting the prayer for amendment. It is trite, all amendments which are necessary for determination of the real question in the controversy between the parties are required to be allowed keeping in view the element of potentiality of prejudice to the opponent. In the case at hand, the basic case of the Plaintiff that there was a verbal Agreement for Sale does not get altered. Certain additional terms and conditions, subject to which the parties allegedly verbally agreed to transfer the property are sought to be incorporated by way of amendment. Whether there is credence in those assertions is a matter of adjudication at the

trial. However, at the stage of considering the Application for amendment, the Court is not expected to delve into the merits of the matter. Eventually, the Plaintiffs may not succeed in establishing the case sought to be set up by way of amendment. However, that is not the test on the touchstone of which the Application for amendment is to be determined.

11. In any event the amendment was sought at a pre-trial stage. The Defendants would get an efficacious opportunity to meet the case sought to be introduced by way of amendment. Therefore, the impugned order deserves to be interfered with.

12. Hence, the following order:

: O R D E R :

- (i) The Petition stands allowed.
- (ii) The impugned order stands quashed and set aside.
- (iii) The Application (Exhibit “26”) stands allowed.
- (iv) The Petitioners-Plaintiffs shall carry out the necessary amendment in accordance with the text of the draft amendment incorporated in the Application within a period of three weeks from the date of uploading of this order and serve it’s copy on the Respondents.

(v) The Respondents will be at liberty to file an Additional Written Statement within 30 days of being served with the amended copy of the Plaint.

(vi) All questions are kept open for consideration.

(vii) It is hereby clarified that the observations hereinabove are confined to determine the legality, propriety and correctness of the impugned order and this Court may not be understood to have expressed any opinion on the merits of the matter.

(viii) In the circumstances, there shall be no order as to costs.

(ix) Rule is made absolute to the aforesaid extent.

Petition disposed.

[N. J. JAMADAR, J.]