

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5973 OF 2025

Yusuf Babu Patel and Ors. ... Petitioners

V/s.

Smt. Rabiya Nazeer Maniyar and ... Respondents
Ors.

Mr. Bhushan Deshmukh, for the petitioners.

CORAM : N.J. JAMADAR, J.

DATE : 8th MAY 2025.

PC:

1. Heard the learned counsel for the petitioners.
2. The challenge in this petition is to two orders passed by the Trial Court.
3. By the first order dated 15th February 2025, the trial Court permitted the plaintiff to amend the plaint so as to correct the surname of defendant no. 12 and also the description of the suit property 1-A so as to show area of the land as 16 R instead of 46 R.
4. By another order of even date, the Trial Court permitted the plaintiff to bring one of the legal representatives of the deceased defendant no. 9, on record and carry out consequential amendment in the plaint.
5. The learned counsel for the petitioners, submitted that the

learned Civil Judge committed an error in law in allowing the application for amendment as it was filed at the fag end of the trial and almost after completion of submissions/ arguments on behalf of the parties.

6. Learned counsel for the petitioner submitted that the interdict contained in the proviso to Rule VI Rule 17 came into play, and since the plaintiff had failed to satisfy the test of due diligence, the trial Court could not have permitted the plaintiff to amend the plaint

7. As regards the order permitting the plaintiff to bring one of the legal representatives of the defendant no. 9 on record, Mr. Deshmukh submitted that there was an inordinate delay of over 18 months in seeking amendment to bring the said legal representative on record, though the fact that the proposed defendant no. 9c was a legal representative of the defendant no. 9 was already brought to the notice of the plaintiff.

8. I have perused the applications for amendment, and seeking permission to bring the legal representative of the deceased defendant no 9 on record.

9. It is true that, the proviso to Order VI Rule 17 limits the power of the Court to permit a party to amend the pleadings after the commencement of the trial. Due diligence on the part of the party seeking the amendment is construed as a jurisdictional fact. ***Vidyabai and Ors vs. Padmalatha and Anr¹***

1 2009 (2) SCC 409

10. However, the Court cannot loose sight of the substance of the matter. In the instant case the amendment allowed by the trial Court was essentially in the nature of correction of clerical and typographical errors and inadvertent omission. The correction in the surname of defendant no.12 does not cause any substantial prejudice to any of the parties. Nor does the correction in the description of the suit property by reducing the area of the suit property described in 1A of the plaint to 16 R from 46 R causes such irretrievable prejudice to the defendants as not to permit the plaintiff to carry out the amendment.

11. In these circumstances, the learned Civil Judge was justified in allowing the application for amendment.

12. As regards the order permitting the plaintiff to bring on record one of the legal representatives of deceased defendant no. 9, suffice to note that the estate of the deceased defendant no. 9 was already represented as there were other legal representatives of the defendant no. 9, on record. In such a situation, the suit does not abate.

13. It is also trite that the prayer to set aside the abatement is implicit in the prayer to permit a party to bring legal representatives of the deceased party on record. Therefore, the second order also does not warrant interference in exercise of supervisory jurisdiction.

14. The petition stands dismissed.

(N.J. JAMADAR, J)