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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7933 OF 2025**

Shri Radhakrishna Mandir
Panvel Through. Its Trustee
Sanjeev P Samel and anr

.....Petitioners

Vs.

Rohidas Dharma Mhaskar and ors

.....Respondents

Mr. Kishore Patil i/b Mr. M. R. Bhor Advocate for the Petitioners

**CORAM : GAURI GODSE, J.
DATE : 2nd JULY 2025**

ORDER:

1. This petition is filed by the defendants to challenge the order permitting the plaintiffs to carry out amendment. The application for carrying out amendment is filed at a pre-trial stage. Issues are not yet framed. Respondents filed a suit to challenge the sale deed executed by defendant no. 1(petitioner no. 1) in favour of defendant no. 2(petitioner no. 2) on the ground that it is illegal and would not bind the plaintiffs. The plaintiff claims to be agricultural tenant in respect of the property which is subject matter of the sale deed.

2. In this suit, defendants filed the written statement and

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objected to the plaintiff's claim of tenancy. Thereafter, the plaintiff filed an application for amending the suit. The proposed amendment pertains to the additional pleadings and seeks a declaration that the permission granted by the Charity Commissioner to sell the property would not be binding upon the plaintiff. The plaintiff also prayed for injunction by way of proposed amendment. This application is allowed by the impugned order.

3. Learned counsel for the petitioners submits that proposed prayer clause (a-1) would fall within the exclusive jurisdiction of the Charity Commissioner. He relies upon sub-section (2) of Section 36 of The Maharashtra Public Trust Act, 1950 ('said Act') which provides for revocation of the sanction granted under clause (a)(b) sub-section (1) of Section 36 of the said Act. He submits that Section 80 of the said Act bars Civil Court's jurisdiction. He, thus, submits that a prayer which would be barred before Civil Court's jurisdiction cannot be permitted to be added in a plaint by way of an amendment. Learned counsel for the petitioner, therefore, submits that the prayers that would not be within the jurisdiction of the Civil Court should not have been

granted by the impugned order.

4. I have perused the papers of the petition. There is no dispute that the issues are not framed and the trial has not yet commenced. The objections raised on behalf of the petitioners to the proposed amendment pertain to the merits of the proposed amendment. The issue regarding Civil Court's jurisdiction in view of Section 80 of the said Act, can always be dealt with by the Trial Court at the time of framing issues and at the time of trial of the Suit. The petitioners can always raise all possible contentions by filing additional statement. The plaintiff was entitled to seek these reliefs at the time of institution of the suit. However, before the issues were framed and the trial commenced, the plaintiff has applied for amendment. The learned Trial Judge has considered the objections raised on behalf of the petitioners. The learned Judge held that the proposed amendment cannot be refused by considering the merits of the proposed amendment. The learned Judge further observed that the proposed amendment does not breach any of the defendants' rights and contentions.

5. The objection raised to the proposed amendment on the

ground of Civil Court's jurisdiction, would not apply to the whole proposed amendment. Hence, learned Trial Judge is right in observing that the amendment would not change the nature of the suit. The permission granted to amend the plaint cannot be decided on the merits of the proposed amendment. It is a well established legal principle that normally the amendment should be allowed unless the exceptions carved out by various decisions of the Hon'ble Apex Court warrants dismissal of such application of seeking amendment.

6. The legal principles to consider and decide the application for leave to carry out amendment are summarised by the Hon'ble Apex Court in the decision of *Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and Ors*¹. Considering the well settled legal principles, I do not see any reason to disallow the application seeking amendment. It is always open for the petitioners(defendants) to raise all possible contentions as permissible in law by filing additional written statement. Considering the stage of filing the application for amendment, I see no prejudice caused to the petitioners by allowing the

¹ 2022 (16) SCC 1

amendment. It is not a fit case to exercise discretionary jurisdiction under Article 227 of the Constitution of India to interfere in the impugned order.

7. The petition is devoid of any merit. Hence, the petition is dismissed.

[GAURI GODSE, J.]