

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13147 OF 2025

Harishchandra Pandurang Raut

...Petitioner

Versus

Adinath Namdev Raut and ors.

...Respondents

Mr. Rati S. Sinhasane, for the Petitioner.

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CORAM: N. J. JAMADAR, J.
DATED: 14th OCTOBER, 2025

Order:-

1. Heard the learned Counsel for the parties.
2. The challenge in this petition is to an order dated 11th July, 2025 passed by the learned Civil Judge, Bhore, whereby an application, preferred by the petitioners – plaintiffs seeking amendment in the plaint and addition of parties to the suit, came to be dismissed.
3. The petitioner – plaintiffs have instituted the suit for a declaration that the plaintiffs are the owners of the suit property and the plaintiffs have acquired title by adverse possession over ½ share of the defendants in the suit property. And that the Gift Deed dated 24th November, 1987 is sham, null and void and does not bind the plaintiffs and the consequential reliefs.

4. The trial commenced. The plaintiffs led evidence. After the plaintiffs closed their evidence, the application for amendment in the plaint came to be filed seeking the impleadment of the parties in whose favour the general Power of Attorney has been executed by defendant No.1 on 24th October, 2019, and, amendment to incorporate additional averments.

5. The learned Civil Judge was persuaded to reject the application opining, *inter alia*, that in the application seeking amendment in the plaint the plaintiffs have not ascribed any cause as to why the plaintiffs did not seek the amendment before the commencement of trial. Thus, for want of due diligence, the plaintiffs cannot be permitted to amend the plaint after the closure of the plaintiffs evidence.

6. Ms. Rati Sinhasane, the learned Counsel for the petitioner, would urge that the proposed amendment is necessary for determination of real question in controversy between the parties. The said Power of Attorney has been executed by defendant No.1 in favour of the proposed defendants in teeth of the injunction order. Therefore, the learned Civil Judge, ought not to have rejected the application seeking amendment in the plaint.

7. I find it difficult to accede to the submissions on behalf of the petitioner. The learned Civil Judge has rightly recorded that the plaintiffs were aware of the existence of the said Power of Attorney dated 24th October, 2019, at least, since 7th June, 2022, as the plaintiffs had filed an application for production of documents under the provisions of Order XI Rule 14 of the Code of Civil Procedure, 1908. Though that application was rejected, the plaintiffs did not seek any amendment in the plaint and instead adduced their evidence and filed the application after closure of their evidence.

8. In view of the decision of the Supreme Court in the case of *Vidyabai and others vs. Padmalatha and another*¹ it is now well settled that, the satisfaction as to due diligence is a jurisdictional fact to permit the amendment in the pleadings after the commencement of trial.

9. The Court was thus anxious to consider whether the plaintiffs have ascribed any reason to satisfy the test of due diligence. The application for amendment in the plaint is singularly silent as to why the plaintiffs could not prefer the application before the commencement of trial. In the absence of such explanation to satisfy the test of due diligence, the

¹ (2009) 2 Supreme Court Cases 409.

jurisdictional fact to allow the application for amendment cannot be said to have been satisfied. Thus, the learned Civil Judge committed no error in dismissing the application for amendment. The petition, therefore, does not deserve to be entertained.

10. The petition stands dismissed.

[N. J. JAMADAR, J.]