

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13443 OF 2025

Uttam Vittal Veerkar and ors. ...Petitioners

Versus

Sou. Dwarkabai Ganpat Fanase and ors. ...Respondents

Mr. Sushil Inamdar, for the Petitioners.

CORAM: N. J. JAMADAR, J.

DATED: 14th OCTOBER, 2025

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SUBHASH
KULKARNI

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Oral Order:-

1. Heard the learned Counsel for the petitioners.
2. The challenge in this petition is to an order dated 5th February, 2025 passed by the learned Civil Judge, Senior Division, Pune, whereby an application preferred by the petitioners – plaintiffs to amend the plaint, came to be rejected.
3. The suit came to be instituted in the year 2005 for declaration that, the Will dated 29th July, 2000 purportedly executed by Vitthal Tukaram Veerkar, the father of plaintiff No.1, is illegal and void and for consequential reliefs. The said suit was dismissed by the trial Court by a judgment and decree dated 19th December, 2012. The decree was carried in appeal before the District Court in RCA No.131/2013.

4. By a judgment and decree dated 1st December, 2021, the learned District Judge, allowed the appeal by setting aside the judgment and decree passed by the trial Court dated 19th December, 2012 and the suit was remanded back to the Civil Court for a fresh decision.

5. Upon remand, the petitioners filed an application to amend the plaint on 20th March, 2024, seeking to incorporate the fact that, there was a partition on 23rd April, 1979 and 9th January, 1992. Instrument executed on 21st April, 1997 and an agreement executed between the deceased Vitthal Veerkar and Irrigation Department were also sought to be introduced by way of amendment.

6. The learned Civil Judge was persuaded to reject the application on the premise that, all the events, which the plaintiff sought to bring on the record of the Court, had transpired much prior to the institution of the suit. The proposed amendment was thus barred by the proviso to Order VI Rule 17 of the Code of Civil Procedure, 1908 and the plaintiffs had failed to show due diligence.

7. Mr. Inamdar, the learned Counsel for the petitioners, submitted that by an order dated 3rd October, 2023 an additional issue as to whether Vitthal Veerkar executed the Will

dated 29th July, 2000 in a sound and disposing state of mind came to be framed and immediately thereafter the plaintiffs filed application seeking amendment in the plaint. The proposed amendment is necessary for the determination of the real question in controversy between the parties and, therefore, the learned Civil Judge committed an error in granting the application for amendment.

8. I have perused the material on record.

9. The proposed amendment does not seem to have any nexus with the framing of an additional issue regarding the sound and disposing state of mind of the testator at the time of the execution of the purported Will. By the proposed amendment, the plaintiffs professed to bring on record the facts which had transpired decades prior to the institution of the suit. There was no element of due diligence. In the circumstances, no explanation could be offered as to why the proposed amendment was not sought before the commencement of the trial. The endeavour of Mr. Inamdar to urge that, the documents were in the custody of the mother of the plaintiffs, who passed away in the year 2023, does not merit acceptance having regard to the trajectory of the proceedings in the suit.

10. 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. In the case at hand, the amendment was sought after the remand of the matter to the trial Court, in respect of the events, which had transpired decades ago the institution of the suit.

11. In these circumstances, the learned Civil Judge committed no error in rejecting the application.

12. The petition stands dismissed.

[N. J. JAMADAR, J.]

1 (2009) 2 Supreme Court Cases 409.