

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14367 OF 2025

Kamla Vaidyanathan (since deceased)
through Legal Representative Laxmi
Venkateswaran

...Petitioner

Versus

Deepak Madhavrao Mankar And Ors.

...Respondents

AND

WRIT PETITION NO. 14377 OF 2025

Ramya Venkateswaran

...Petitioner

Versus

Deepak Madhavrao Mankar And Ors.

...Respondents

Mr. Govind Solanke, a/w Nikhil Cahndan, for the Petitioner in
both WP.

CORAM: N. J. JAMADAR, J.

DATED: 25th NOVEMBER, 2025

Oral Order:-

1. Heard the learned Counsel for the petitioners.
2. The challenge in these petitions is to identical orders dated 21st June, 2025, whereby the learned Judge, Court of Small Causes, dismissed the applications for amendment, taken out by the plaintiffs. Initially, the plaintiffs instituted the suits for recovery of possession of the 5 R land each, out of Survey No.33/2/1 admeasuring 2 Hectare, alleging that the plaintiffs were forcibly dispossessed.

3. By way of proposed amendment, the plaintiffs sought to implead a Co-operative Housing Society as a party defendant to the suit, which came into existence after defendant No.9 allegedly constructed a multi-storeyed building on a portion of the suit property and sold the flats therein and also sought declarations with regard to the instruments executed by defendant Nos.1 to 9. The plaintiffs also sought amendment to convert the suits to the ones based on proprietary title, under Section 5 of the Specific Reliefs Act, from the suits for regaining possession, under Section 6 of the Specific Reliefs Act.

4. By the impugned order, the learned Judge, Court of Small Causes, was persuaded to reject the applications observing, *inter alia*, that the plaintiffs professed to include Survey No.32/2/74 and sought declarations with regard to instruments in respect of Survey No.33/2/79 and 33/2/80, which were not part of the suit property from which the plaintiffs were allegedly dispossessed. *Prima facie*, no nexus between the plaintiffs and the said properties could be demonstrated. Moreover, the documents in respect of which the declarations were proposed to be sought by the plaintiffs were executed in the year 2007 and 2012 and the applications for amendment came to be filed

in the year 2023, after settlement of issues. Therefore, the proposed amendment cannot be allowed.

5. The learned Counsel for the petitioners submitted that, the petitioners were unaware of the developments in the intervening period. The proposed amendments would not change the nature of the suits. It was submitted that, the proposed amendments were necessary to determine the real question in controversy between the parties.

6. I have given careful consideration to the submissions and the material on record. Evidently, the suits were instituted in the year 2006 for recovery of possession of the suit premises admeasuring 5 R each, out of Survey No.33/2/1. In a suit under Section 6 of the Specific Reliefs Act, the factum of possession and unlawful dispossession assume importance. The question of title is not germane for the determination of the suit under Section 6 of the Specific Reliefs Act.

7. By the proposed amendment, the plaintiffs intend to completely alter the nature of the suit. Proprietary title is sought to be asserted not only in respect of the suit property but also two other properties i.e. Survey Nos.32/2/79 and 32/2/80, which were not included in the suit property. In a suit for possession under Section 6 of the Specific Reliefs Act,

when the plaintiff alleges dispossession, the plaintiff must confine the relief to the property of which he was legally dispossessed. By the proposed amendment the plaintiffs intend to assail the Development Agreement dated 30th April, 2007 executed by defendant Nos.1 to 8, and adjoining holders, in favour of defendant No.9 in respect of Survey Nos.33/2/79 and 33/2/80, which were not part of the suit property of which the plaintiffs were allegedly dispossessed. Therefore, the nature and character of the suit would be completely altered.

8. In these circumstances, the learned Judge, Court of Small Causes, was justified in rejecting the applications for amendment. Hence, in exercise of the supervisory jurisdiction, this Court does not find any justification to entertain the petitions.

9. The petitions thus stand dismissed.

10. The petitioner – plaintiffs shall, however, be at liberty to work out their remedies on the basis of proprietary title, if available in law.

[N. J. JAMADAR, J.]