



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 3535/2025

(ISMAIL SARDAR PATHAN **VERSUS** ELIZABETH HENRY THOMAS & OTHERS)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri M.S. Sharma, counsel for the petitioner.
Shri J.J. Chandurkar, counsel for the respondent no.1.
Shri S.K. Bhalerao, counsel for the respondent no.2 and 3.
Shri S.N. Dongre, counsel for the respondent no.4.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : DECEMBER 08, 2025.

Heard the learned counsel for the parties.

2. The petitioner has challenged the order dated 17.10.2024 passed by the trial Court allowing the application under Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short, 'the Code) seeking amendment of plaint.

3. The petitioner is the original defendant no.3 in the suit filed by the plaintiff seeking a decree for declaration of the sale-deed executed by the defendant no.1 in favour of the defendant no.2 as illegal and null and void. During pendency of the suit, the suit property was sold by the defendant no.2 in favour of the defendant nos.3A and 4A. In this background, the plaintiff filed an application under Order I Rule 10 read with Order VI Rule 17 of the Code for impleading the subsequent purchasers as party defendants and for incorporating the subsequent events in the plaint. The amendment application was filed at the stage when evidence on affidavit was also not filed by the plaintiff and by order dated 17.10.2024 the application came to be allowed subject to costs of Rs.1,000/-. This order is subjected to challenge by the instant petition.

4. The learned counsel for the petitioner submitted that by the proposed amendment the plaintiff is attempting to change the nature of suit and he is also introducing a new prayer. He submitted that the amendment is not necessary for deciding the controversy as raised in the suit.

5. While considering the controversy, it has to be seen that the petitioner is the original defendant no.3 in the suit. The suit was filed by the plaintiff challenging the sale-deed which was executed in favour of defendant no.2 by the defendant no.1 and in view of subsequent sale-deed executed in favour of the defendant nos.3A and 4A, the amendment was sought to be made. Pertinently, no grievance is raised by other defendants with respect to the order allowing the amendment of the plaint. The grievance sought to be raised by the petitioner, who is defendant no.3 in the suit, is apparently without any locus. Although the petitioner has submitted that the proposed amendment will amount to changing the nature of the suit, it has to be seen that in view of the peculiar fact about the sale-deed being executed in favour of defendant nos.3A and 4A, the amendment appears to be necessary for complete adjudication of the controversy involved in the suit. The petitioner who is defendant no.3 in the suit is entitled to submit necessary pleadings and contest the suit in his own right. Pertinently, the counsel for the respondents have also pointed out that the defendant nos.3A and 4A, who were joined as party defendants, have not been arrayed as parties to the instant petition.

6. Having regard to the above mentioned factual and legal aspects, the challenge to the order allowing amendment of the plaint at the instance of the defendant no.3, is without any merit. A perusal of the impugned order shows that the trial Court has given due consideration to the relevant aspects while considering the application under Order I Rule 10 read with Order VI Rule 17 of the Code. No perversity is seen with the impugned order.

7. Hence, no indulgence is warranted under Article 227 of the Constitution of India. The writ petition is accordingly dismissed with no order as to costs.

(PRAFULLA S. KHUBALKAR, J.)

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