



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

**WRIT PETITION NO. 2069/2025**

(SHALIGRAM GAJMAL VAIRALKAR & OTHERS **VERSUS** ANJANI TUKARAM PISE & OTHERS)

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

*Court's or Judge's order*

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Shri N.B. Kalwaghe, counsel for the petitioners.

Shri S.D. Chande, R.D. Karode and S.V. Kulkarni, counsel for the respondents.

**CORAM : PRAFULLA S. KHUBALKAR, J.**

**DATE : SEPTEMBER 09, 2025**

**FINAL ORDER :**

Heard the learned counsel for the parties.

2. By this writ petition, the petitioners take an exception to the order dated 23.10.2024 passed by the trial Court allowing the application filed by the plaintiff seeking amendment of the plaint under Order VI Rule 17 of the Code of Civil Procedure, 1908.

3. The controversy arises in the suit filed by the respondent no.1 seeking relief of partition and separate possession claiming 1/5<sup>th</sup> share in the suit properties. The petitioners who are the original defendant nos.1 to 3, 5 and 6 in the civil suit have filed their written statement. At the stage of evidence of the defendants, an application for amendment at Exhibit 88 came to be filed in which the impugned order is passed.

4. The primary contention of Shri N.B. Kalwaghe, learned counsel for the petitioners is that the trial Court has allowed the application for amendment of plaint without considering the most

crucial aspect that the plaintiff has failed to demonstrate exercise of due diligence in seeking the amendment. The learned counsel for the petitioners submits that the suit filed by the respondent no.1 is for claiming the relief of partition and separate possession in which the evidence of the plaintiff is over and the defendant no.1 has also filed his evidence on affidavit on record. It is submitted that the plaintiff has earlier submitted applications for amendment on two occasions which were allowed and thereafter the third application for amendment at Exhibit 88 came to be filed. It is submitted that the amendment proposed by this application could have been sought in the earlier applications and the plaintiff has not exercised due diligence. It is submitted that in the entire application for amendment, the plaintiff has not at all disclosed any reason as to why the amendment proposed was not incorporated in the plaint or was not sought for in the earlier two amendment applications. It is submitted that the trial Court has passed the impugned order without considering the crucial aspect of absence of due diligence and has focused only on the aspect that the proposed amendment is necessary for just decision of the case. It is submitted that the impugned order does not show as to how the proposed amendment is necessary for proper and effective adjudication of the issue involved in the matter. In support of his submissions, the learned counsel for the petitioner has relied upon the judgments of the Hon'ble Apex Court in *Pandit Malhari Mahale Versus Monika Pandit Mahale & Others* [(2020) 11 SCC 549] and *Vidyabai &*

*Others Versus Padmalatha & Another* [(2009) 2 SCC 409]. By inviting Court's attention to the position of law laid down in the aforesaid judgments, it is submitted that in absence of any finding by the Court about exercise of due diligence by the plaintiff in introducing the amendment before commencement of the trial, the impugned order is rendered unsustainable in law.

5. Per contra, Shri S.D. Chande, learned counsel for the respondents, has opposed the writ petition. He submitted that the suit filed by the respondent no.1 is for partition and separate possession. He submitted that by the proposed amendment the plaintiff has only proposed to clarify the nature of the suit properties which are undisputedly ancestral properties. The plaintiff has filed the amendment application to bring on record certain relevant facts regarding the suit property and certain other aspects in view of apprehension of the defendants in creating third party interest with respect to the suit property. He has invited the Court's attention to the proposed amendment and pointed out that the plaintiff desires to incorporate prayers for claiming injunction to restrain the defendants from creating third party interest. He therefore submitted that no prejudice would be caused to the defendants in case the amendment application is allowed. In support of his submissions, he has placed reliance on the judgment of the Hon'ble Supreme Court in *Life Insurance Corporation of India Versus Sanjeev Builders Private Limited & Others* [MANU/SC/1093/2022].

He also submitted that the proposed amendment is necessary for effective adjudication of the controversy involved in the suit.

6. Rival contentions thus fall for my consideration.

7. It is pertinent to note that the plaintiff has filed the application for amendment after evidence of the plaintiff is closed and after the defendant no.1 has filed on record the evidence on affidavit. It has to be noted that after the issues were framed in the civil suit, the plaintiff has submitted application for amendment at Exhibit 29 which was allowed by the order dated 09.11.2021 thereby permitting the plaintiffs to correct the boundaries of the suit property by amending paragraphs 3-A, B and C of the plaint. Thereafter, the plaintiff submitted second application for amendment by filing an application at Exhibit 47 and proposed to add the details of some portion of the suit property and related mutation entries. This application was also allowed by an order dated 13.12.2022. Thereafter the plaintiff submitted the third application at Exhibit 88 by proposing to add various paragraphs in the plaint including insertion of the word 'ancestral properties' at various places in the plaint and by proposing to add various paragraphs in the plaint including new prayer clauses to incorporate the relief of injunction against the defendants.

8. A perusal of the application for amendment shows that the plaintiff has not at all disclosed any reasons as to why the proposed amendments were not incorporated earlier either in the plaint or in

other two applications for amendment. In view of the fact that the plaintiff has earlier amended the plaint on two occasions by two separate applications, it was necessary for the plaintiff to mention reasons as to why the proposed amendment was not made earlier. As such, although the issue as to whether the amendment is necessary to decide the real dispute between the parties is relevant, at the same time the issue of exercise of due diligence by the plaintiff is crucial. Even perusal of the proposed amendments show that the plaintiff has proposed to add certain paragraphs for clarifying the nature of the suit properties, which can be established on the basis of pleadings in the plaint.

9. In view of the peculiar controversy involved in the writ petition, particularly because the amendment application is filed at the stage of evidence of the defendants, the issue of 'due diligence' assumes significance. Considering the purport of the proviso to Order VI Rule 17 of the Code of Civil Procedure, 1908 and the position of law as laid down in the matter of *Pandit Malhari Mahale* and *Vidyabai* (supra), it is clear that while deciding the application for amendment, the Court was required to first decide the issue of exercise of due diligence by the plaintiff. In absence of consideration of this vital issue, the impugned order is unsustainable. In view of the settled position of law, the trial Court ought to have recorded its finding on the issue of due diligence. In absence of consideration of this crucial aspect, it is necessary to remand the matter to the trial Court to decide the application for

amendment afresh by giving due consideration to all the relevant aspects. Hence, I pass the following order :-

- I. The writ petition is partly allowed.
  - II. The impugned order dated 23.10.2024 passed by the trial Court is quashed and set aside.
  - III. The matter is remanded to the trial Court for considering the amendment application at Exhibit 88 afresh by taking into consideration the observations in Paragraph 9 hereinabove. The trial Court shall decide the application at Exhibit 88 preferably within one month from the date of uploading of this order.
  - IV. In view of the controversy involved, the trial Court is directed to expedite the proceedings of the civil suit and endeavour to dispose of the civil suit within six months from the date of this order.
10. The writ petition is disposed of in aforesaid terms. No costs.

**(PRAFULLA S. KHUBALKAR, J.)**