



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

Writ Petition No. 1054 of 2025

[Kamla w/o Mahadeo Kadhane and anr. ..vs.. Rekha W/o Prabhakar Kishor Gawali
and ors.]

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

Court's or Judge's orders

Mr. V. B. Bhise, Advocate for the petitioners

CORAM : ANIL L. PANSARE J.

DATED : 26-02-2025

Heard.

2. The petitioners - original defendant nos. 5 and 6 are aggrieved by order dated 3-1-2025 passed by learned Civil Judge Junior Division, Patur in Regular Civil Suit No. 12/2012 thereby rejecting the application filed by the petitioners under Order VI Rule 17 of the Code of Civil Procedure, 1908.

3. The trial Court has rejected the application on the count that petitioners are supporting respondent no. 1's – plaintiff's case. They have filed written statement admitting the contents of the plaint. The other respondents are contesting the suit. The issues were framed in September, 2010. Respondent no. 1 led evidence in December, 2010. The petitioners failed to cross-examine respondent no. 1 despite affording the opportunity. The contesting defendants have extensively cross-examined the respondent no. 1.

4. In these circumstances, the trial Court was searching for a justification of petitioners filing application after 14 years of the date of filing written statement but found no cause, much less, justified cause. The petitioners have assigned vague reasons. According to them, they have taken search of revenue record at the Office of Tahsildar, Patur as also

Collector, Akola on many occasions, however, did not get any document. The petitioners have conveniently omitted to disclose the date when such search was taken. They have then averred that they received documents on 20-5-2024 and 3-9-2024 and thereafter filed an application seeking amendment to written statement.

5. When asked as to what is proposed amendment, learned counsel for the petitioners submits that petitioners intend to put forth a case that property under question is an ancestral property. This status, to my mind, is pleaded by respondent no. 1 in the plaint and accordingly, sought partition and separate possession along with other reliefs. Respondent no. 1 in paragraph no. 2 made a categorical statement that suit property is an ancestral property. The petitioners are supporting respondent no. 1's case, meaning thereby that the status of ancestral property is already on record. In the circumstances, with a vague plea that they were searching for revenue record cannot be said to be a good ground to permit petitioners to amend written statement after a lapse of 14 years, that too, after commencement of trial.

6. Learned counsel for the petitioners has relied upon the judgment in the case of *Dinesh Goyal alias Pappu Vs. Suman Agarwal (Bindal) and others [2024 SCC OnLine SC 2615]* to contend that amendment post trial could be allowed. True it is that in appropriate cases, depending on the nature of amendment, the application seeking amendment in the pleadings can be allowed. In the said case, the petitioner therein, by way of amendment, intended to challenge the Will. The Supreme Court held that since the suit is for partition, unless validity of Will is decided, the dispute could not be resolved finally. Thus, the nature of amendment was such that

would go to the root of the case. In the present case, such is not the status.

7. As noted above, the amendment sought is in fact the case of the respondent no. 1 and the petitioners are supporting the said case. That being so, there is no merit in the petition. The petition is accordingly dismissed *in limini*.

(Anil L. Pansare, J.)

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