



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

WRIT PETITION NO. 6890 OF 2022

Smt. Chitra Ramesh Padole,
Aged about 69 years,
Occ.- Business and Agriculturist,
R/o. Plot No.20, Congress Nagar,
Amravati, Tq. & Dist. Amravati.

.... **PETITIONER**

// **VERSUS** //

- 1) **Indraraj Ramesh Padole,**
Aged about 42 years, Occ.-Business,
- 2) **Sau. Ashwini Amit Khedkar @
Ashwini Ramesh Padole,**
Aged about 39 years, Occ.-Housework,
Nos.1 and 2 R/o. Shidore Layout,
Camp, Amravati, Tq. & Dist. Amravati.
- 3) **The President/Secretary,**
Congress Nagar Co-operative
Housing Society Ltd., Amravati,
Reg. No.AMT/HSG/143 having its
Office at Congress Nagar, Amravati,
Tq. and Dist. Amravati.

.... **RESPONDENTS**

Mr. Dhiraj S. Joshi, Advocate for the Petitioner.
Mr. Amol B. Patil, Advocate for the Respondent No.1.

CORAM : SMT. M. S. JAWALKAR, J.
DATE ON RESERVING THE JUDGMENT : 02.04.2025.
DATE ON PRONOUNCING THE JUDGMENT : 06.05.2025

JUDGMENT :

1. **RULE.** Rule made returnable forthwith.
2. Heard finally with the consent of the learned counsel appearing for the parties.
3. Being aggrieved by the order dated 20.12.2021, passed by the learned Extra Joint Civil Judge, Senior Division, Amravati, below Exhibit-30, in Special Civil Suit No.61/2019, the Petitioner preferred this writ petition.

The facts in nutshell are as under :

4. Plaintiff/Petitioner herein filed a suit for partition, separate possession and declaration of the plaintiff's share, money and accounts as she is the second wife and widow of late Ramesh Anandrao Padole, who died at Kully on 22.07.2018. The Respondent Nos.1 and 2 are the son and daughter of late Ramesh Anandrao Padole from his first wife Chhaya, who also expired. The deceased Ramesh Padole left behind immovable properties described in the plaint. The Petitioner/plaintiff contended that Petitioner and Respondent Nos.1 and 2 are the only legal heirs of deceased Ramesh Padole, who died intestate and they have jointly

succeeded to the suit property after his death. After death of deceased Ramesh Padole, the Respondent No.1, who has several vices, started ill-treating the Petitioner and did not allow her to raise the crops and take yields from the said field and Respondent Nos.1 and 2 without consulting the Petitioner trying to sell the suit field. The Petitioner further submitted that Respondent Nos.1 and 2 suppressing the material fact from the Court, obtained a Legal Heir Certificate in their names only by suppressing the fact that the Petitioner is also legal heir of late Ramesh Padole being his wife. The Respondent Nos.1 and 2 by obtaining the false Legal Heir Certificate trying to mutate their names in the suit properties and did not deliver the separate share to the Petitioner. Therefore, the Petitioner filed a Civil suit bearing Special Civil Suit No.61/2019.

5. The Respondent Nos.1 and 2 filed their written statement in the said suit and denied the claim of the Petitioner contending that they have sought heirship certificate from the competent Court of law and despite publication of notice, neither any objection raised by the Petitioner nor appeared and replied thereto. Respondent Nos.1 and 2 contended that they are the only absolute legal heirs of late Ramesh Padole. The mutation entries

are recorded in their names, which the Petitioner not challenged before the competent Authority. The Respondent Nos.1 and 2 and their late father who proposed the Petitioner to made her a servant to look after the late Ramesh Padole during his life time. Late Ramesh Padole reposed the faith and trust upon the Petitioner, the request of the Petitioner to reside in the outhouse at Congress Nagar was considered by deceased Ramsh Padole. However, despite requesting her to vacate the said house, the Petitioner continued her occupation after death of late Ramesh Padole and by taking undue advantage and dishonest intention, trying to create relations with the deceased Ramesh Padole.

6. The contention of the Petitioner is that in the Special Civil Suit No.61/2019, issues were framed on 28.09.2020 and Petitioner has filed her examination-in-chief on 16.02.2021. Thereafter, taking into consideration the denial of relationship by the Respondent Nos.1 and 2 in their written statement, the Petitioner filed an Application under Order 6 Rule 17 of the Civil Procedure Code, 1908 (CPC) for amendment to the suit on the ground that after perusal of written statement, the Petitioner wants to bring every fact before the Court and to bring the subsequent developments. The Petitioner submitted that the

proposed amendment did not change the nature of the suit. The Respondent Nos.1 and 2 filed their reply to the said application for amendment and strongly opposed the application on the ground that the trial already commenced and proposed amendment are not subsequent fact or new facts, they are already in existence. The plaintiff has not given any reason as to why these facts were not pleaded at the time of filing of the suit, it is an attempt of plaintiff to bring new facts on record to fill up the lacuna. The plaintiff was married lady, she has not sought divorce from her husband and when the Respondent Nos.1 and 2 requested her to vacate the house, she has tried to create the relations with the defendants by taking undue advantage of her residence in their outhouse.

7. On 20.12.2021, the learned trial Court rejected the Application Exhibit-30 on the ground that the trial had already commenced and the Petitioner wants to add her contentions about the R.M.J.C. filed by the Respondent nos.1 and 2 for obtaining legal heir certificate and R.M.J.C. filed by the Petitioner for revocation of the said certificate. The Petitioner has not brought on record any reason as to why she has not pleaded about the

marriage ceremony etc. The said order dated 20.12.2021 is the subject matter of this writ petition.

8. Learned Counsel for the Petitioner submitted that the learned trial Court wrongly concluded that the trial has commenced. The learned trial Court ought to have seen that the Respondent Nos.1 and 2 filed their written statement on 21.09.2019 and denied the relationship, which is unexpected to the Petitioner. The amendment is made by explaining proper grounds and no new grounds came to be added by way of amendment and said amendment will not change the nature of the suit. The Petitioner only wants to bring the entire facts and subsequent development which is already pleaded but not elaborated in detail. The learned Counsel for the Petitioner further submitted that the order passed by the learned trial Court is illegal as only affidavit of evidence came to be filed hence prayed that the impugned order needs to be quashed and set aside.

9. Learned Counsel for the Petitioner relied on the following citations :

(i) ***Vidyabai and others Vs. Padmalatha and another***, reported in ***(2009) AIR (SCW) 899*** and

(ii) ***Pandit Malhari Mahale Vs. Monika Pandit Mahale and others***, reported in ***(2020) 11 SCC 549***.

10. Learned Counsel for the Respondent No.1 supported the order passed by the learned trial Court and contended that the order passed by the learned trial Court is legal, just and proper and it needs no interference. He relied on the following citations :

(i) ***Basavraj Vs. Indira and others***, reported in ***(2024) 3 SCC 705*** and

(ii) ***Pandit Malhari Mahale Vs. Monika Pandit Mahale and others***, reported in ***(2020) 11 SCC 549***.

11. Heard learned Counsel for both the parties at length. Perused the impugned order and documents placed on record and considered the citations relied on by both the parties. Learned Trial Court rejected the application for grant of permission to amend the plaint on the ground that trial is commenced and in spite of knowledge of the marriage ceremony, she has not pleaded in the suit itself.

12. I have perused the copy of plaint wherein plaintiff has specifically pleaded that the plaintiff is the second wife and

widow of late Ramesh Anandrao Padole. On perusal of application for amendment, by way of this amendment application, petitioner seeks permission to add paragraph No.2A, in which she wanted to place on record the application filed by her for revocation of succession certificate issued in favour of respondents and also some more facts about her performance of marriage.

13. It also appears from the documents that only chief examination of the plaintiff was filed and there was no further progress in the matter. Whatever examination in chief is filed, it is only contentions in the plaint. As such, even if application for amendment is allowed, no prejudice is going to cause to the respondents as it is nothing, but clarificatory in nature. There is already plea raised by the plaintiff that she is second wife of deceased Ramesh Padole.

14. Learned Counsel for petitioner placed reliance on ***Pandit Malhari Mahale (supra)*** wherein the Hon'ble Apex Court relied on the judgment of ***Vidyabai and ors. Vs.Padmalatha and anr., (2009) 2 SCC 409***, wherein it is observed in paragraph No.19 as under:

“19. It is primal duty of the Court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, proviso appended to Order VI Rule 17 of the Code restricts the power of the court. It puts an embargo on exercise of its jurisdiction. The court's jurisdiction in a case of this nature is limited. Thus unless the jurisdictional fact, as envisaged therein, is found to be existing, the court will have no jurisdiction at all to allow the amendment of the plaint.”

15. Learned Counsel for petitioner also relied on ***Life Insurance Corporation of India (supra)***, wherein while drawing final conclusion, the Hon'ble Apex Court summed up certain facts to be considered while dealing with the application for amendment. Wherein it is held that all amendments are to be allowed, which are necessary for determining the real question in controversy provided, it does not cause injustice or prejudice to the other side. It has to be allowed if it is required for effective and proper adjudication of the controversy between the parties. It also required to be allowed to avoid multiplicity of proceedings. Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such,

where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed.

16. As against this learned counsel for respondent No.1 relied on *Basavaraj (supra)*, however, facts involved in the matter are altogether different. There was a suit for partition of ancestral property belonging to their grandfather pleading that no actual partition of property ever took place, when suit was at fag end, an application was filed by respondents 1 and 2 seeking amendment of plaint. Amendment sought was to add prayer in the suit for a declaration that an earlier compromise decree was null and void. In my considered opinion, in the present matter, the plaintiff has not claimed any amendment to prayer clause. So far as marriage with deceased Ramesh Padole is claimed in the plaint itself. As such, whatever clarificatory amendment is placed on record would not prejudice or cause any injustice to the respondents, as the cross of the plaintiff is also not commenced.

17. Learned Counsel for respondent No.1 also relied on ***Pandit Malhari Mahale (supra)***, wherein Hon'ble Apex Court held that finding regarding due diligence needs to be recorded. Learned Counsel for respondent No.1 also relied on ***Vidyabai (supra)***, as observed above in the said matter also, it is held by the Hon'ble Apex Court that it is primal duty of the court to decide as to whether such an amendment is necessary to decide the real dispute between the parties.

18. In my considered opinion, the amendment is only clarificatory in nature and also bringing on record the facts of R.M.J.C. filed by the plaintiff. As no cross is commenced, no prejudice will cause to the defendant. As such, I proceed to pass the following order:

ORDER

- i) The Writ Petition is allowed.
- ii) The order dated 20.12.2021 passed at Exhibit 30 by Extra Joint Civil Judge Senior Division, Amravati, is hereby quashed and set aside.

iii) The application Exhibit- 30 is hereby allowed subject to payment of costs of Rs.5000/- to be paid to the defendant or to deposit in the Trial Court within a period of two weeks.

iv) Amendment be carried out within a period of two weeks after payment of costs.

19. The Writ Petition is disposed of accordingly.

(SMT. M.S. JAWALKAR, J.)

Kirtak/Sahare