



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

Writ Petition No. 2869 of 2025

[Dattopant Namdeo Nalamwar (died) Santosh Dattopant Nalamwar
..vs.. Dnyaneshwar Balaji Khedekar]

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

Court's or Judge's orders

Mr. R. L. Kadu, Advocate for the petitioner

CORAM : ANIL L. PANSARE J.

DATED : 09-06-2025

Heard.

2. The petitioner – original plaintiff no. 2 is aggrieved by order rejecting the petitioner's application seeking amendment to plaint. The petitioner sought to add subsequent developments so also certain averments pertaining to the agreement/contract sought to be specifically performed through suit.

3. It appears that the petitioner and respondent entered into agreement to sale dated 16-5-2015 pertaining to agricultural land belonging to respondent. It further appears that the land under question was under Class II rights. It further appears that vide order dated 7-5-2018 in revenue proceedings, the land was converted to Class I rights. It further appears that vide order dated 10-5-2024, the revenue entry relating to tenant came to be deleted.

4. As per agreement, it was the duty of the respondent to get the land converted into Class I rights and also to get name of tenant deleted from the revenue record. This appears to have been done in terms of orders referred to above.

5. The trial Court rejected the application on the ground that this amendment could have been made prior to

commencement of trial. The suit came to be filed in the year 2019 being Special Civil Suit No. 13/2019.

6. If that be so, there appears no reason why should plaintiff not incorporate in their pleadings about order dated 7-5-2018 by which the land under question was converted to Class I rights. So far as deletion of name of tenant is concerned, again no reason has been assigned by the plaintiffs as to why the amendment was not sought prior to commencement of trial. Further, the trial Court, considering the nature of amendment, took a view that the amendment is not relevant to decide the real controversy.

7. The above finding, if considered, in the light of averments made in the suit as also the prayers, in my considered view, appears to be justified. The plaintiffs have filed suit for specific performance of contract with the averments that the defendants have from time to time accepted Rs. 7,50,000/- out of Rs. 9,50,000/-. The plaintiffs are ready and willing to pay remaining amount of Rs. 2,00,000/- which is to be paid at the time of execution of sale deed. They have further averred that the respondent/defendant was under obligation to get the land converted from Class II rights to Class I rights and also to get the entry of tenant deleted. According to plaintiffs, the respondent/defendant has not performed his part of contract and hence the suit.

8. Thus, a specific performance of terms for conversion of land from Class II to Class I as also the entry of deletion of tenant has been sought. As stated earlier, this part of contract appears to have been performed pending suit. This fact could always be brought to the notice of the Court by placing on record certified copies of the orders passed by the revenue authorities and also through evidence.

9. The attention of petitioner is invited to Order XIII Rule (1)(3) of the Code of Civil Procedure, 1908 which provides that :

“[1. Original documents to be produced at or before the settlement of issues. - (1) The parties or their pleader shall produce on or before the settlement of issues, all the documentary evidence in original where the copies thereof have been filed along with plaint or written statement.

*(2) The Court shall receive the documents so produced :
Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.*

(3) Nothing in sub-rule (1) shall apply to documents -

(a) produced for the cross-examination of the witnesses of the other party ; or

(b) handed over to a witness merely to refresh his memory.]” *(emphasis now)*

10. Thus, documents could be produced for cross-examination of witnesses. So far as the real controversy is concerned, the so called subsequent development of converting the land from Class II rights to Class I rights and also of deletion of entry of tenant will be not relevant to decide the real controversy which relates to specific performance of contract. It is nobody's case that unless the aforesaid aspect is considered or placed before the trial Court, the decree of specific performance cannot be granted or that the suit itself cannot be decided.

11. That being so, I do not find any reason to interfere with the impugned order in writ jurisdiction under Article 227 of the Constitution. The petition is accordingly dismissed with no order as to costs.

(Anil L. Pansare, J.)