



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

WRIT PETITION NO. 2860 OF 2022

Sheikh Mobin Sheikh Wahid Vs. Ajiz Khan Samsher Khan Pathan (died) thru.
Yusuf and ors.

*Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order*

Court's or Judge's Order

Ms. S.H. Waldekar, Advocate for petitioner.
Mr. M. S. Abbasi, Advocate for respondent Nos.1 to 4.

CORAM : ROHIT W. JOSHI, J.

DATE : 05.12.2025.

. By the present petition, the petitioner who is defendant in Regular Civil Suit No.20 of 2013 is assailing order dated 06.02.2021 passed by the learned Trial Court allowing the application for amendment of plaint filed by the respondent/plaintiff vide application at Exh.89. The suit is a suit for partition and separate possession. While the suit was pending the original defendant died. The petitioner had moved an application for impleading his name as legal representative of the deceased defendant on the basis of Will Deed dated 28.04.2014.

2. In view of the above development, which had taken place after filing of the suit, the plaintiff/respondent filed an application for amendment of plaint in order to challenge the Will, the said application was allowed by the learned Trial Court.

3. The learned Trial Court has rightly allowed the application for amendment, since subsequent events

which are relevant for adjudication of the suit were sought to be incorporated in the plaint by the proposed amendment. The impugned order does not demonstrate any error, warranting interference at the hands of this Court. It will also be pertinent to mention that the petitioner has also filed application for making consequential amendments in the written statement after the application for amendment came to be allowed by the learned Trial Court.

4. In view of the above, writ petition stands **dismissed**, with no order as to costs.

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5. The present petition takes exception to order dated 21.01.2023 passed by the learned Trial Court on application at Exh.139 in Special Civil Suit No.20 of 2013, which is an application seeking consequential amendment in the written statement in view of amendment of plaint.

6. The learned Trial Court has rejected the application on the ground that by way of proposed amendment, the petitioner/defendant did not intend to raise any question of fact. It is observed that the defendant does not intend to incorporate any statement of fact in the written statement by way of amendment. The learned Trial Court has observed that the proposed amendment was in nature of arguments based on legal provisions.

7. However, in order to safeguard the interest of the defendant, the learned Trial Court has also observed that all the contentions that are sought to be raised in the written statement by way of amendment can be raised by the defendant during the course of trial of the suit and particularly at the stage of final arguments. The said observations made by the learned Trial Court adequately protect the interest of the petitioner/defendant.

8. I have perused the application for amendment. The only contention that is sought to be raised by the petitioner/defendant is that although a declaration is sought that the will is not binding on the plaintiff, the plaintiff has not sought cancellation of the Will Deed. In the considered opinion of this Court, the learned Trial Court is absolutely right in observing that the said contention can be raised during the course of final arguments even in the absence of pleadings. The impugned order rejecting the application for consequential amendment, therefore, does not warrant any interference, writ petition is dismissed.

9. As the suit is pending since the year 2013, the learned Trial Court is requested to expedite the suit. The learned Trial Court should make an endeavour to decide the suit as early as possible and in any case on or before **30.04.2026**.

(ROHIT W. JOSHI, J.)