



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

WRIT PETITION NO. 2826 OF 2019

(Kamlakar Balaji Murlidhar and another vs. Narayan Ananda Patude and another)

*Office Notes, Office Memorandum of Coram,
appearances, Court's orders or the directions,
and Registrar's orders.*

Court's or Judge's order

Mr. Apurv De, Advocate for applicants/petitioners.
Mr. S.S.Deshpande, Advocate for respondent Nos.1 and 2.

CORAM : SIDDHESHWAR S. THOMBRE, J.
NOVEMBER 13, 2025

CIVIL APPLICATION (W) NO. 3122 OF 2024

- 1) Heard learned counsel for the respective parties.
- 2) By this application the applicants seek to bring legal heirs of petitioners on record and condone the delay of 370 days in setting aside the abatement.
- 3) The applicants have satisfactorily explained the delay. Therefore, the present application is allowed. The delay is hereby condoned. Necessary amendment to be carried out forthwith.

WRIT PETITION NO.2826 OF 2019

- 1) Heard learned counsel for the respective parties.
- 2) The present petition is directed against the order below Exh.27 dated 02/01/2019 passed by the Court 4th Joint Civil Judge, Junior Division, Washim in R.C.S. No.143/2015, whereby the application filed by the plaintiffs/respondents under Order 6 Rule 17 came to be allowed.

- 3) Learned counsel petitioner vehemently opposed the said application on the ground that if such amendment is permitted, it changes the nature of the suit. He pointed out para 3 of the plaint in R.C.S.No.143/2015 and the prayers made in the Civil Suit, whereby it reveals that the suit was only for simplicitor injunction. By way of the amendment plaintiffs are seeking mandatory injunction asking the Joint Charity Commissioner to grant permission under Section 36 of the Maharashtra Public Trust Act, 1950. In support of his contention he relied upon the judgment of this Court in ***Basavaraj vs. Indira and others (2024) 3 SCC 705*** and submits that if the application for amendment changes the nature of the defence taken by the defendants, the trial Court is not supposed to permit the amendment of the plaint.
- 4) He further submits that the bar of Order II Rule 2 of Civil Procedure Code would apply to the present case. He further relied upon the judgments of Hon'ble Apex Court in the case of ***Y.B.Patil and others vs. Y.L.Patil (1976) 4 SCC OnLine 66*** and also ***State Bank of India vs. Gracure Pharmaceuticals Ltd. 2014(4) Mh.L.J. 20*** and submitted that Trial Court ought not to have permitted the plaintiffs to amend the plaint.
- 5) Per contra, learned counsel for the respondents original plaintiffs submit that the suit was for perpetual injunction and there are sufficient pleadings with regard to seeking permission from the competent authority. The amendment sought by the respondents arose out of agreement of sale executed on 08/04/1982. The amendment sought is before the commencement of Trial.
- 6) In support of his contention, learned counsel for respondents relied upon the judgment of this Court in the case of

Shankarrao Dattatray Patil and others vs. Shaikh Abdul Razak and others 2016(4) Mh.L.J. 936 and *Sanjay Suganchand Kasliwal vs. Jugalkishor Chhaganlal Tapadia 2015(3) Mh.L.J. 121*, and would submit that the Trial Court is not supposed to consider the proposed amendment at this stage and the same should be considered at the time of Trial.

7) I have gone through the submissions advanced by both the counsels and the record place before me which transpires that the suit is for simplicitor injunction and there was a specific pleading in the suit that the permission was to be obtained for executing the sale deed. Therefore, subsequent prayer seeking mandatory injunction and direction to defendants/petitioners to obtain permission from the Charity Commissioner under Section 36 of the Mumbai Public Trusts Act, 1950, does not change the nature of the defence if permission to amend the written statement is granted.

8) Learned Trial Court has considered the aspect of the matter rightly, therefore, I do not find any reason to interfere with the order passed by learned Trial Court under Article 227 of the Constitution of India. In view thereof, the present petition is dismissed. No order as to costs.

(SIDDHESHWAR S. THOMBRE, J.)