



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

**WRIT PETITION NO.7042/2022**

**PETITIONERS :**  
ORIGINAL  
PLAINTIFF

1. Rameshkumar s/o Hirala Vaish since deceased through Lrs.,
  - (a) Leela wd/o Ramesh Vaish,  
Aged about 61 years, Occupation Household, r/o Nagar Panchayat Shankargad Pargana, Tahsil Bara, Illahabad, Uttar Pradesh.
  - (b) Jyoti w/o Pramod Gupta,  
Aged about 40 years, Occupation Household.
  - (c) Kumud @ Sharda w/o Mukesh Soni,  
aged about 38 years, Occupation Household.
  - (d) Archana w/o Akhilesh Soni  
Aged about 36 years, Occupation Household.
  - (e) Shweta w/o Rajnikant Gupta,  
Aged about 32 years, Occupation Household.
- (b) to (e) r/o Nagar Panchayat Shankargad Pargana, Tahsil Bara, Illahabad, Uttar Pradesh presently residing at Shahpur, District Baitul, Madhya Pradesh.
- (a) to (e) acting through their registered power of attorney Ajit s/o Ramesh Vaish, Aged about 43 years, Occupation Business, r/o Nagar Panchayat Shankargadh Pargana, Tahsil Bara, District Illahabad, Uttar Pradesh.

- (f) Ajit s/o Ramesh Vaish  
Aged about 43 years, Occupation  
Business, r/o Nagar Panchayat Shankargadh  
Pargana, Tahsil Bara, District Illahabad,  
Uttar Pradesh.

**...VERSUS...**

- RESPONDENTS** : 1) Gangubai wd/o Natthual Gupta  
ORIGINAL Aged about 40 years, Occupation  
RESPONDENTS Business, r/o Bhaji Market, Control Wadi,  
District Nagpur.
- 2) Bhimrao Shrawanji Borkar,  
Proprietor of M/s Sai Grain Bhandar,  
at Central Wadi, In front of Bus stand,  
Amravati Road, Mouza Wadi, Nagpur.
- 3) Hemraj Shrawanji Borkar,  
Proprietor of M/s Bajrang Kirana  
Grain Bhandar, at Central Wadi, in front  
of Bus stand, Amravati Road, Mouza  
Wadi, Nagpur.

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Mr. M.S. Sharma, Advocate for petitioners  
Mr. A.J. Thakkar, Advocate for respondent No.1  
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**CORAM : SACHIN S. DESHMUKH, J.**  
**DATE : 28/07/2025**

**ORAL JUDGMENT :**

1. Heard. Rule. Rule made returnable forthwith. The petition is heard finally with the consent of the learned Counsel at the stage of admission.
2. The petitioner has entered into a development agreement and in the process General Power of Attorney was executed. In a suit

presented by the petitioners bearing Regular Civil Suit No.434/2012 seeking declaration of title, possession and permanent injunction in relation to the subject suit land, which is a Municipal House No.174, is executed by the developer in favour of the plaintiff. The trial Court decreed the suit of the petitioner, declaring the plaintiff is the absolute owner of the suit property and the eventual direction to handover the vacant possession of the suit property and also granted injunction.

3. Aggrieved by the order of trial Court, the appeal came to be presented by the respondents, however, in the interregnum the developer executed an agreement in favour of the present petitioner. On account of execution of the development agreement, during the pendency of appeal, precisely in the year 2019, therefore, an application under Order 6 Rule 17 r/w Section 151 of the Code of Civil Procedure was presented by the respondents, wherein the defence was already raised in written statement of fraud being played by the petitioner was specifically incorporated in the written statement and after receipt of the agreement between the petitioner and the developer, an application was taken out at an appellate stage to raise the said ground in detail, thereby making what is implicit rather explicit by way of amendment at appellate stage. The said proposed amendment was incorporated so as to find out the real question of fraud being played by the petitioner/original plaintiff in connivance with the developer.

4. While resisting the said application, developer denied all contentions raised therein and specifically denied the contention of fraud. The first Appellate Court i.e. District Judge -1, Nagpur while considering the said application taking into account the scope and ambit of Order XLI Rule 2 of the Code of Civil Procedure unequivocally permits the Appellate Court and does not restrict the ground of objection set forth in the memorandum of appeal or taken by leave of the Court. The same is controlled by the proviso that the Court shall not rest its decision on any other ground unless party who may be affected has had sufficient opportunity of contesting the case on ground. Admittedly, the said amendment is allowed at an appellate stage and is regulated by Order XLI Rule 2 of the Code of Civil Procedure. Essentially the Appellate Court shall not confine the ground of objection set forth in the memorandum of appeal and in any case allowing the proposed amendment would not cause any prejudice, much less in the wake of the fact that the event which is subsequent in time and pertinently has occurred during the pendency of appeal, as such, no prejudice would cause. Resultantly, the application presented by the respondents is allowed. Aggrieved by the same, the petitioners have approached this Court.

5. It is the contention of the learned Counsel for the petitioners that the Court below has erred in allowing the application,

as it would cause serious prejudice to the petitioners and the Appellate Court has misread and misinterpreted the provisions of Order XLI Rule 2 of the Code of Civil Procedure, as such prayed for allowing the petition by rejecting the application presented by the respondents.

6. Per contra, the learned Counsel for the respondents has supported the order by submitting that the event sought to be incorporated by way of amendment is a subsequent one and in any case no prejudice would cause to the petitioners. The petitioners have the opportunity to meet with the said amendment may be at an appellate stage and the same is in accordance with Order XLI Rule 2 of the Code of Civil Procedure, as such, prayed for dismissal of the petition by endorsing the order of the first Appellate Court.

7. Having heard the respective learned Counsel for the litigating sides, it is a matter of record that event sought to be incorporated by way of amendment at an appellate stage is concerned pertinently the same has occurred during the pendency of the appeal. Nevertheless no prejudice would be caused to the petitioners in any manner by virtue of the amendment. Nevertheless same is also in accordance with the provisions of Order XLI Rule 2 of the Code of Civil Procedure, which unequivocally enables the Appellate Court that the Appellate Court shall not confine itself to the grounds of objection set forth in the memorandum of appeal and that can be heard even if it is

not set forth in the memorandum of appeal, however, only rider is that affected party has had sufficient opportunity of contesting the case on that ground. Admittedly, the respondents have already raised a plea of fraud and by virtue of amendment, same is rather made explicit by virtue of proposed amendment. In the wake of event taken place during the pendency of appeal. As such, the first Appellate Court is justified while allowing the application permitting the appellant to incorporate additional grounds in the memorandum of appeal and even in the paper-book, which would not cause any prejudice and rather facilitate appellate Court to render the decision on subject matter. Equally, the petitioners have an opportunity to meet with grounds those are incorporated by way of amendment. Resultantly, no error is noted in the order. As such, the writ petition stands on its merit. Accordingly, the writ petition is dismissed. Rule is discharged. No order as to costs.

**(SACHIN S. DESHMUKH, J.)**