



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

WRIT PETITION NO.74 OF 2023

Raywantabai Asaram Ueky and others .Vs. Babulal Mohpat Pandhare and others

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

Court's or Judge's Order

Mr. O.L. Gupta, Advocate for petitioners.

CORAM : ROHIT W. JOSHI, J.

DATE : 23/12/2025

1. The respondents though duly served, have not entered appearance in the matter. The impugned order is passed on an application for amendment of the plaint filed by the petitioners, who are the original plaintiffs in Regular Civil Suit No.44 of 2018, pending before the learned Civil Judge Junior Division, Aamgaon.

2. The plaintiffs have filed a suit for permanent injunction with respect to an agricultural land. The plaintiffs claim ownership over the suit property as their ancestral property. The defendants are the lineal descendants of the sister of the plaintiffs' father. They are claiming ownership over the suit property on the basis of a Will. This defence of claiming ownership on the basis of Will is set up in the written statement filed by them.

3. In such circumstances, the application for amendment came to be filed in order to challenge the Will set up by the defendants in support of their case. Although the application is filed after framing of issues, it is filed

before commencement of the trial i.e. before recording of evidence of the plaintiffs.

4. Even if the plaintiffs do not challenge the Will, the defendants will have to prove the same in order to prove their defence. In such circumstances, in the considered opinion of this Court, the learned trial Court ought to have allowed the application for amendment, particularly when it is filed prior to the commencement of the trial. For the aforesaid reasons, the present writ petition deserves to be allowed and is **allowed** in the following terms :-

- i) Order below Exh.22 in Regular Civil Suit No.44 of 2018, dated 03.08.2022, passed by the Civil Judge Junior Division, Aamgaon, is quashed and set aside and the said application for amendment of plaint is **allowed**.
- ii) No order as to costs.

(ROHIT W. JOSHI, J.)