



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

WRIT PETITION NO.155/2024

1. Shri Maroti S/o Govinda Zade,
Aged about 79 Yrs., Occu. Agriculturist.
2. Smt. Laxmibai Maroti Zade,
Aged about 66 Yrs., Occu. Agriculturist.
3. Shri Devidas S/o Maroti Zade,
Aged about 52 Yrs., Occu. Agriculturist.
4. Shri Nikhil S/o Devidas Zade,
Aged about 24 Yrs., Occu. Agriculturist.

All R/o Dorli, Tah. Wani,
Distt. Yavatmal.

... Petitioners
(Original Defendants)

- Versus -

1. Sau. Pushpa Balkrushna Borpe,
Age 51 Yrs., Occu. Housewife,
R/o Majari Colory, Chaitanya Colony,
Miners Quarter No. C 5,
Post Shivaji Nagar, Tah. Bhadrawati,
Distt. Chandrapur.
2. Sau. Kalpana Suresh Padole,
aged about 44 Yrs. Occu. Housewife,
R/o Dorli, Tah. Wani, Distt. Yavatmal.
3. Sau. Sushila Bala Patil,
aged about 54 Yrs. Occu. Agriculturist,
R/o Near Petrol Pump, Ghugghus,
Tah. and Distt. Chandrapur.

... Respondents
(Original Plaintiffs)

Mr. Omkar R. Deshpande, Advocate for the petitioners.
Mr. A.V. Bhide, Advocate for respondent No.2.

CORAM: MRS.VRUSHALI V. JOSHI, J.
DATE OF RESERVING THE JUDGMENT: 10.6.2025.
DATE OF PRONOUNCING THE JUDGMENT: 13.6.2025.

JUDGMENT

Rule. Rule made returnable forthwith. Heard finally by consent of learned Advocates for the parties.

2. The present petition challenges the order dated 24.08.2023 passed by the learned Civil Judge, Junior Division, Wani rejecting the application for amendment in written statement filed by the defendants under Order VI Rule 17 of the Civil Procedure Code, 1908.

3. The plaintiffs have filed civil suit for declaration, partition and separate possession of suit property and the defendants have also filed their written statement. Defendants

after filing of the written statement noticed that some technical errors have occurred in the written statement and some text has been omitted inadvertently. Therefore, the defendants filed an application on 17.11.2022 seeking amendment in the written statement. The defendants thereby tried to reject the fact that the property in question is an ancestral property.

4. It is the contention of the petitioners/original defendants that the learned trial Court had rejected the application for amendment in written statement since trial had already commenced and defendants failed to show their due diligence. The petitioners further contended that the amendment in written statement does not change the nature of the suit. The amendment which is sought to be incorporated was in same tune with the main defence taken in the matter and the same by no stretch of imagination can change the defence of the defendants.

5. In the reply, the plaintiffs pointed out that the defendants in the original suit had clearly admitted the fact that

the suit property is the ancestral property of the defendants. Now by amendment the petitioners are denying the admission made by them and trying to add some averments in that context which is not permissible even in written statement. Hence prayed to dismiss the petition.

6. Heard both sides and perused the record.

7. The petitioners/original defendants in this petition had filed an application for amendment in the written statement which came to be rejected by the impugned order.

8. It is the contention of the petitioners that at the time of preparing for cross-examination of plaintiffs' witness P.W.1 they came across certain mistakes in their written statement and after deleting said mistakes, it is necessary to add some averments which also have been left to be pleaded at the time of filing of the written statement.

9. On perusal of application for amendment it appears that the mistake which the petitioners have mentioned is about “मान्य” and to insert the word “अमान्य”. It is in respect of the admission about ancestral property and by deleting the word “मान्य” the defendants are trying to deny the stand taken by them in their written statement and by deleting the word “वडीलोपार्जित” they are trying to incorporate the words “वडीलांपासून आलेला” and in connection with the above-said corrections have filed an amendment application and sought to add paras 13-A, 13-B and 13-C which are about denial of ancestral property.

10. The learned Advocate for the petitioners has relied on the judgment of Baldev Singh and others V/s. Manohar Singh and another reported in (2006) 6 SCC 498 wherein it is observed as follows:-

“An amendment of a plaint and amendment of a written statement are not necessarily governed by exactly the same principle. It is true that some general principles are certainly common to both, but the rules that the plaintiff cannot be allowed to amend his pleadings so as to alter materially or substitute his

cause of action or the nature of his claim has necessarily no counterpart in the law relating to amendment of the written statement. Adding a new ground of defence or substituting or altering a defence does not raise the same problem as adding, altering or substituting a new cause of action. Accordingly, in the case of amendment of written statement, the courts are inclined to be more liberal in allowing amendment of the written statement than of plaint and question of prejudice is less likely to operate with same rigour in the former than in the latter case. Therefore inconsistent pleas can be raised by the defendants in the written statement although the same may not be permissible in the case of plaint.”

11. Though the petitioners have relied on the observations made in The Bhowanipur Gujrati Education Society reported in **1993 SCC OnLine Cal 165** regarding amendment of written statement, in para 8 of the same judgment the Court has specifically observed as under:-

“8.In a case, where by way of amendment in written statement, a plea inconsistent with earlier plea is sought to be raised, the Court should be liberal to allow such amendment, if it finds that the earlier admission was made by a mistake. However, when the earlier statement is found to be made not by mistake, and the party deliberately sought to change its mind by introducing amendment in the written statement, such amendment should be refused.”

12. There is a difference between the admission by mistake in the written statement and if the earlier statement is found to be made not by mistake and the party deliberately sought to change its mind by introducing amendment in the written statement, such amendments should be refused by the Court. It appears that the petitioners have stated about mistake about “मान्य” and “अमान्य” but other contentions in written statement proves that they had the intention to say same thing and at the time of cross-examination have changed their mind.

13. The learned Advocate for the petitioners has also relied on the following judgments:-

(i) Life Insurance Corporation of India V/s. Sanjeev Builders Private Limited and another reported in (2022) 8 S.C.R. 1121 and

(ii) Usha Balashaheb Swami and others V/s. Kiran Appaso Swami and others reported in (2007) 5 SCC 602.

14. On perusal of the contents which the petitioners want to introduce by way of an amendment in the written statement it appears that the consistent view is taken in the written statement that the property is ancestral and it has been inherited upon defendant No.1 from his father. The proposed amendment will change the defence of the defendants which goes to the root of the case and it will cause serious injustice and irreparable loss to the plaintiffs.

15. This Court in case of Prabhakar Sadashiv Gokhale and another V/s. Ramesh Shankar Ladkat and others reported in **2017 (4) Mh.L.J.634** has elaborately observed about Order VI Rule 17 proviso and about the effect of due diligence. As per the said proviso no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party seeking amendment could not have raised the matter before the commencement of trial.

“7. Order VI, Rule 17 clearly stipulates that the Court may at any stage of the proceedings allow

either party to alter or amend these pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties. In 2002, a proviso was added to Rule 17 which clearly states that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party seeking amendment could not have raised the matter before the commencement of trial. What the proviso clearly stipulates and what the Legislature clearly intended was to curtail the discretion that was granted to the Court to grant the amendment in the main part of the Rule. The effect of the proviso is clearly mandatory. It clearly stipulates that no application for amendment "shall" be allowed after the trial had commenced unless the condition as set out in the said proviso is fulfilled. In other words, what the proviso stipulates is that the Court is barred from allowing any amendment after the trial has commenced unless the condition set out in Order VI, Rule 17 is satisfied.

8.

9. *This decision of the Supreme Court has also been followed by a Single Judge of this Court in the case of Chhabubai Haribhau Badakh V/s. S.H. Khatod and Sons and another, reported in 2009(6) Mh L. J. 760. This Court, after relying upon the decision of the Supreme Court in the case of Vidyabai (supra), held as under:-*

"It is thus clear that if the amendment is sought after the commencement of trial, unless the Court comes to the conclusion that in spite of exercise of due diligence, the party could not have raised the

matter before the commencement of trial, the amendment cannot be allowed. In the present case, leave aside any averment regarding due diligence, there is not even a whisper in the written statement about same. The only statement is that while filing the written statement the fact regarding said Mr. Parik being General Power of Attorney Holder could not be mentioned due to inadvertence. In that view of the matter, I am of the considered view that the learned trial Court had no jurisdiction to entertain the amendment as there is nothing on record to show that the matter which was sought to be brought on record could not have been brought on record before the commencement of trial in spite of exercise of due diligence by the respondents/defendants." (emphasis supplied)"

16. Though the learned Advocate for the petitioners has relied on the judgments of this Court and the Hon'ble Apex Court in support of his argument that there is no restriction to the defendants to amend the written statement at any time, with due respect, in my humble opinion, are not helpful to the petitioners. The admissions which are not made mistakenly and are consciously made in the written statement are if allowed to be withdrawn by way of an amendment in the written statement and the defence is allowed to be totally changed, then in that case, such amendment which is sought at the belated stage i.e. after the

commencement of trial, would defeat the very purpose of the proviso to Order VI Rule 17 of the Code of Civil Procedure, which cannot be permitted.

17. In this case the trial had already commenced as the suit was at the stage of cross-examination and at that time the petitioners realized about the said admissions/mistakes and for rectifying the same, they have filed an application for amendment in the written statement, which cannot be considered at such a belated stage of evidence. The trial Court has rightly rejected the application. Hence no interference is warranted at the hands of this Court. Accordingly, the writ petition stands dismissed. No costs.

(MRS.VRUSHALI V. JOSHI, J.)