



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

WRIT PETITION NO. 806 OF 2024

1. Dilip s/o Bhaurao Jadhao
Aged about : 56 Years, Occu : Agriculturist,
R/o Belara, Tahsil Chikhli, District
Buldhana.
2. Taramati wd/o Bhaurao Jadhao
Aged about : 74 Years, Occu : Household,
R/o Aurangabad, Tahsil and District
Aurangabad.
3. Milind s/o Bhaurao Jadhao
Aged about : 55 Years, Occu : Service, R/o
Buldhana, Tahsil and District Buldhana.
4. Malti w/o Ganesh Sable
Aged about : 51 Years, Occu : Household,
R/o Belara, Tahsil Chikhli, District
Buldhana.
5. Ramesh s/o Bhaurao Jadhao
Aged about : 55 Years, Occu : Service, R/o
Belara, Tahsil Chikhli, District Buldhana.

Petitioner Nos.2 to 5 through Petitioner
No.1 Power of Attorney.

... PETITIONERS

VERSUS

Tulshiram s/o Nivrutti Sarudkar
Aged about : 74 Years, Occu : Agriculturist,
R/o Belara, Tahsil Chikhli, District Buldhana

... RESPONDENT

Mr. T. S. Deshpande, Advocate for Petitioners.
Mr. R. G. Kavimandan, Advocate for Respondent.

CORAM : R. M. JOSHI, J.
DATE : JUNE 27, 2025.

ORAL JUDGMENT

. By consent of both sides, Petition is heard finally at the stage of admission.

2. This Petition takes exception to the order dated 6/11/2023 passed below Exhibit-46 in Regular Civil Suit No. 133/2021 by the Civil Judge Junior Division, Chikhli, District Buldhana.

3. Parties are referred to as 'Plaintiff' and 'Defendant' for the sake of convenience.

4. Admittedly, the Plaintiff filed suit for injunction and declaration that Will Deed dated 24/10/2020 registered on 24/1/2021 is not binding on the rights of the Plaintiff in respect of the suit property. In the plaint it is specifically averred that the Plaintiff is in possession of the suit property. The Defendant disputed the claim of the Plaintiff as far as genuineness of Will Deed as well as possession of the suit property is concerned. Exhibit 17 was heard by

the trial court which came to be rejected by refusing the interim relief to the Plaintiff.

5. Thereafter the application (Exhibit-46) came to be moved before the trial court with a contention that the Defendants have dispossessed the Plaintiff from the suit property on 19/10/2021. In view of the subsequent events, amendment is sought to the plaint. The trial court rejected the amendment on the ground that the amendment has been sought belatedly and there would be change in the nature of the suit. The trial court has also gone into the issue of the merit of the amendment for its rejection.

6. The learned Counsel for Petitioners/Original Plaintiffs submits that it was not open for the trial court to consider the merit of the amendment at this stage. It is his further submission that though in the instant case the issues are framed, the affidavit of evidence has not been filed till date and as such in view of the law laid down by the Division Bench of this Court in the case of *Mahadeo V/s Balaji and Others, 2012 SCC OnLine Bom 1283*, it cannot be said that the trial of the suit has commenced. Thus, it is his contention that if the application for amendment has been filed and the amendment is relevant for the decision of the case, it ought to have been allowed by the trial court.

7. The learned Counsel for Respondent opposed the Petition and supported the impugned order. It is his submission that in view of the proviso to Order 6 Rule 17 of the Code of Civil Procedure, the amendment cannot be allowed once the issues are framed. It is his submission that on the face of it the amendment is not *bona fide*, and hence, the trial court was justified in rejecting the same.

8. Perusal of the order impugned indicates that the act of filing of application after about 1 ½ years of the alleged incident of Defendant taking possession of the suit property weighed more than any other thing for rejection of the application. The trial court has gone into the correctness/genuineness of the amendment sought to be made, which could not have been gone into at this stage. Undoubtedly, it is open for the parties to substantiate or oppose such contention on merit during the course of the trial.

9. The amendment is also rejected on the ground that there is no due diligence shown by the Plaintiff for not carrying out amendment earlier. In view of the Judgment of the Division Bench of this Court in the case of *Mahadeo (supra)*, the trial can be said to have commenced from the date of filing of affidavits in lieu of examination-in-chief and the proviso to Order 6 Rule 17 of the Code would come into play only after the stage of filing of

affidavits. Thus, the trial court ought not to have gone into the issue of due diligence for rejection of the application.

10. Suffice it to say that, the amendment sought is relevant and hence keeping open the issue of its genuineness for agitation at the proper stage of trial, application for amendment deserves to be allowed. Accordingly, the impugned order stands set aside. Application (Exhibit-46) stands allowed. It would be open for the Defendant to file additional written statement to the amended plaint.

11. Writ Petition stands allowed in above terms.

(R. M. JOSHI, J.)

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