



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

WRIT PETITION NO. 1107 OF 2024

Mamta Vivekanand Raipure, aged about 33 years,
Occ: Agriculturist, R/o Chakpinjari, Tah. Saoli,
Dist. Chandrapur.

PETITIONER

VERSUS

1. Vilas Shravan Juware, aged about 41 years,
Occ: Agriculturist, R/o Lodholi,
Tah. Saoli, Dist. Chandrapur.
2. Keshav Patruji Bhardkar, aged about 36 years,
Occ: Agriculturist, R/o Whyad Khurd,
Tal. Saoli, Dist. Chandrapur.

RESPONDENTS

Shri N.S. Khandewale, Counsel for the petitioner.
Ms Kirti Satpute, counsel for the respondent no.1.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : SEPTEMBER 22, 2025

ORAL JUDGMENT

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

2. By this writ petition, the petitioner has challenged the order dated 19.01.2024 passed by the trial Court rejecting the application for amendment of plaint.

3. The petitioner is the original plaintiff who had filed a suit for declaration, cancellation of the sale-deed dated 29.01.2011 and for permanent injunction, before the Court of Civil Judge (Junior Division), Saoli, District Chandrapur. The defendants appeared in the civil suit and filed their written statement.

4. Before submitting her evidence on affidavit, the plaintiff filed an application for amendment thereby proposing to amend the plaint for incorporating certain clarifications with respect to the nature of the suit property and certain contentions with respect to possession alongwith prayer for grant of possession. In the said application, she contended that certain documents were traced out during pendency of the suit and the proposed amendment is required to be made being vital for complete adjudication of the controversy. The defendants opposed the application by filing their reply contending therein that the same is filed after about eight years after the suit was filed and that the proposed amendment changes the nature of the suit. The trial Court rejected the application by order dated 19.01.2024 and this order is challenged by way of the instant writ petition.

5. Shri N.S. Khandewale, learned counsel for the petitioner vehemently submitted that the proposed amendment is moved for incorporating the prayer for possession and for introducing clarifications to the factual aspects with respect to the suit property and in view of subsequent events occurred during pendency of the suit, the amendment is necessary. He submitted that the proposed amendment does not at all change the nature of the suit and in any case the amendment ought to have been allowed since the evidence in the suit has not yet commenced. In support of his submissions, he relied on the judgment of the Hon'ble Supreme Court in *Life Insurance Corporation of India Versus Sanjeev Builders Private Limited & Another* [(2022) 16 SCC 1] and invited the Court's attention to the

conclusions recorded by the Hon'ble Supreme Court in the nature of guidelines with respect to allowing the amendment applications.

6. Ms Kirti Satpute, learned counsel for the respondent no.1 strongly opposed the petition and submitted that the proposed amendment is sought after eight years of the suit and is an attempt to change the nature of the suit entirely. She strenuously submitted that the petitioner has made an attempt to mislead this Court by filing on record the copy of the amended plaint even though the amendment application is rejected. She also submitted that the proposed amendment ought to have been incorporated in the plaint itself and the plaintiff has failed to demonstrate due diligence on her part.

7. While considering the rival contentions, it has to be seen that the plaintiff has sought the amendment to the plaint after eight years of the filing of the suit. By way of proposed amendment, the plaintiff has sought to introduce certain clarifications and explanations with respect to the nature of suit property and also certain contentions with respect to encroachment committed on the suit property. She also therefore sought to introduce a prayer for possession by way of proposed amendment. Although it appears that apart from clarifications with respect to the suit property, the plaintiff has proposed to introduce prayer for possession which results in changing the nature of the suit, however it is crucial to note that the amendment is sought even before the evidence on affidavit of the plaintiff is submitted. As such, it is clear that the amendment application is filed at a stage when

the trial in the suit is not yet commenced. In view of above, the contentions of the respondent no.1 of absence of due diligence cannot be the only factor. The position of law is laid down by the Hon'ble Supreme Court in the judgment of *Life Insurance Corporation of India* (supra), that the amendment applications are required to be allowed liberally, particularly when the amendment is introduced before the trial has commenced. The law is settled that prayer for amendment is to be allowed if the amendment is necessary for effective and proper adjudication of the controversy in between parties and when it does not result in injustice to other side. Having regard to this position of law and considering the fact that the amendment application is filed before the trial has commenced, the same ought to have been allowed.

8. It has also to be noted that the amendment is sought by the plaintiff after about eight years of filing of the suit and that too after the written statement was filed by the defendants. As such, the defendants will be definitely put to hardship and inconvenience in view of the possible change in nature of the suit. Apart from this, the conduct of the petitioner in filing on record copy of the amended plaint as an annexure to the petition, even before the amendment was allowed, demonstrates negligent attitude although it may not be a misleading attempt on the part of the petitioner. However, since the defendants are put to hardship, they are required to be compensated by awarding appropriate costs. In view of the factual and legal aspects mentioned above, I am of the view that the amendment application which was filed even before the evidence of

affidavit was filed, was required to be allowed. The impugned order therefore deserves to be quashed and set aside.

9. Hence, the following order is passed:-

- I. The impugned order dated 19.01.2024 passed by the Civil Judge (Junior Division), Saoli, District Chandrapur is quashed and set aside subject to the petitioner paying costs of Rs.25,000/- (Rupees Twenty Five Thousand only) to the respondents within a period of two weeks from the date of uploading of this order.
- II. The application for amendment filed by the plaintiff at Exhibit 46 is allowed.

10. Rule is made absolute in aforesaid terms. The writ petition stands disposed of.

(PRAFULLA S. KHUBALKAR, J.)