



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

WRIT PETITION NO. 1182 OF 2025

SHRI KISHNA S/O. MAHADEO GAWALI

Vrs.

SHRI NARAYAN S/O. MAHADEO GAWALI AND OTHERS

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

Court's or Judge's Order

Shri Harsh Kothari, Advocate for petitioner.

CORAM: ANIL L. PANSARE, J.

DATE : 04/03/2025.

1. The challenge is to the order dated 18/09/2024 passed below Exh.65 by 2nd Joint Civil Judge, Junior Division, Umrer, Dist. Nagpur in Regular Civil Suit No.49/2010 by which the learned Trial Court has rejected the application filed by the petitioner – plaintiff to amend the plaint.

2. Having heard learned counsel for the petitioner, it appears from the plaint that the petitioner – plaintiff No.1, respondent No.7 – original plaintiff No.2 and respondent Nos.1 to 6 – original defendants are the legal representatives of one Mahadev who expired in the year 2009. The plaintiffs averred that their father was initially doing the business of vending vegetables and his sons (plaintiff No.1 and defendant Nos.1 to 3) used to help him in his business. Mr. Mahadev acquired suit properties bearing Survey Nos.586 and 585 having area 1.21 and 1.44 hectares respectively out of the funds generated from the business. It was also the case of the plaintiffs that they purchased Field Survey No.591 admeasuring area 1.10

hectares in which they have half share. With such pleadings, the plaintiffs sought declaration that they are entitled for 1/7th share in the suit property being Survey Nos.586 and 585.

4. By way of amendment, the petitioner (who is original plaintiff No.1) intended to put-forth the case that his father i.e. Mahadev purchased suit property bearing Survey Nos.586 and 585 out of the funds given by him and therefore, he has half share in the suit property.

5. The Trial Court refused to accept the theory on the ground that if what has been stated by the plaintiff No.1 is correct, the said fact was within his knowledge on the date of filing suit, but no reason is coming forth why did he not seek amendment at the earliest possible opportunity. The Trial Court further noted that the trial has commenced and therefore, in terms of proviso to Rule 17 of Order 6, there being no diligence, the amendment could not be allowed.

6. In addition to the above reasons which to my mind, are in consonance with the provisions of law, there is yet another reason why should amendment be not allowed. The amendment, if allowed would change the basic plea raised by the petitioner – plaintiff No.1. It is so because in the plaint, petitioner and respondent No.7 have made categorical statement that the sons of Mahadev viz. (plaintiff No.1 and defendant Nos.1 to 3) used to help him in his business. Thus, the contribution of other sons is admitted by the petitioner. That being so, if the amendment is allowed, which would permit the petitioner to change his original version, would

amount to fundamental change in the plea, which is not permissible, particularly post commencement of trial.

7. I, therefore, do not find any reason to interfere with the impugned order in the supervisory jurisdiction under Article 227 of the Constitution. Petition is accordingly dismissed in limine. No costs.

[ANIL L. PANSARE, J.]

Choulwar