



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION NO.3454/2024

Ganesh s/o Tukaram Lonkar,
Age 67 years, Occ. Agriculture
R/o Sarafa-Line, Balaji Market,
Akot, Dist. Akola

... **PETITIONER**

...VERSUS...

1. Ashok s/o Tukaram Lonkar,
Age 63 years, occ. Business,
R/o Jaistambh Chowk, Akot
Tq. Akot, Dist. Akola
2. Ramesh s/o Tukaram Lonkar,
Age 72 years, Occ. Agriculture
R/o Sarafa-Line, Balaji Market,
Akot, Dist. Akola
3. Sau. Leela Deorao Bhore,
Age 70 years, Occ. Household,
4. Sau Savita Vilasrao Guhe
Age 62 years, occ. Household,
R/o C/o Vilasrao Raghunath Ghute,
Bapat Wadi, Parmar's House,
Near Radiant Hospital, Behind
Ahilyabai Wadi Mangal Karyalaya,
Amravati Dist. Amravati.
(Corrected as per order dated 28.03.2025)

...**RESPONDENTS**

Shri Anil Thakkar, Advocate for petitioner
Shri A.B. Mirza, Advocate for respondent No.1

Shri A.S. Dhage, Advocate for respondent No.2

CORAM : SMT. M. S. JAWALKAR, J.

DATED : 29.04.2025

ORAL JUDGMENT

. Heard learned Counsel for the respective parties.

2. The contention of the petitioner that the order dated 18.03.2024 passed by the learned Joint Civil Judge Junior Division, Telhara below Exhibit 34 in R.C.S. No.7/2019 thereby application for amendment is allowed is illegal and perverse.

3. It is contention of the plaintiff that Tukaram Lonkar by testament dated 24.07.1992 bequeath the property. In the said Will, there is specific condition imposed whereby the interest of Dwarkabai was restricted and she was not permitted to make further disposition of property. It is contention of the plaintiff that the purchaser defendant is the brother and is party to the suit. There are specific pleadings in paragraph No.5 that he got the knowledge about the said sale-deed on 29.01.2019.

4. It is specifically submitted that Dwarkabai was an illiterate lady and taking undue advantage of the same. Defendant No.1 got executed the registered sale deed illegally. As per will-deed executed by the plaintiffs and defendant's father no right was given to Dwarkabai to dispose of the property. Therefore, she was not the absolute owner of the property nor was having any right to sell the property on 04.02.2003. He has also pleaded that said sale deed is illegal and it is not binding on the plaintiff. Learned Counsel for respondent/defendant raised objection that in view of limitation under Article 59, the suit for cancellation of sale deed is required to be filed within a period of three years from the date of knowledge.

5. Learned Counsel for petitioner relied on *Anil s/o Ramsing Bilawar and others Vs. Anita w/o Gopal Kadam and another reported in 2022(2) Mh.L.J. 345*, however, facts involved in the said matter are different. There was suppression of knowledge by the applicant as there is no

question of separation, plaintiff himself pleaded in paragraph No.5 when he got the knowledge of sale deed, moreover the defendant is the purchaser who is aware that in the plaint, the plaintiff is challenging the illegal transfer of the property in the hands of Dwarkabai. He has also pleaded that it is illegal as well as not binding. In view thereof, the citation relied on by the learned Counsel for petitioner is not applicable in the present set of facts.

6. Learned Counsel for respondent No.1 relied on *Chakreshwari Construction Pvt. Ltd. Vs. Manohar Lal reported in 2017(5) Mh.L.J. 195*, in support of his contention that to void multiplicity of litigation and as no prejudice is going to cause to the defendant by this amendment as issue to that effect is also not framed and trial is also not commenced, amendment needs to be allowed. In the said citation, the Hon'ble Apex Court referred and relied on principles laid down in judgment of *Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and others, 2009 Mh.L.J. Online (S.C.) 12* laid down some principles while dealing with the application filed under Order 6

Rule 17. They are only illustrative and not exhaustive. However, these principles covered the present case. The learned Trial Court duly considered this aspect and allowed the application. As held in this judgment, no prejudice is going to cause to the defendant as issues are even not framed and trial is yet to commence. In these situation, when the trial is not commenced, the Court should be liberal to allow the amendment application.

7. As such, there is no illegality or perversity in the order passed by the learned Joint Civil Judge Junior Division, Telhara. There is no substance in the petition, accordingly petition stands dismissed.

8. The defendant is at liberty to file consequential amendment within a period of 14 days from passing of this order.

(Smt. M.S. Jawalkar, J.)

R.S. Sahare