IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION NO.4620/2024

1. Dr. Dadaji S/o Ramaji Ambatkar
since dead through LRs

a) Mr. Shashikant S/o Dadaji Ambatkar,
aged about 75 years, Occupation-
Agriculturist, R/o-ward no.3,
Maregaon Road, Mangrud,
District-Yavatmal.

b) Dr. Yashwant S/o Dadaji Ambatkar,
aged about 63 years, Occupation-Doctor,
R/o-Plot No.212, Tikekar Road,
Near Ahiley Mandir, Dhantoli, Nagpur.

c) Mrs. Pushpatai W/o Ishwar Boldhan,
aged about 58 years, Occupation-
Housewife, R/o- Plot No.607, Juna
Bagadganj, Nagpur.

d) Mrs. Shalini W/o Sharadrao Deotale,
aged about 65 years, Occupation-Housewife,
R/o-Near Z.P. School Bothali, Buttibori,
Wardha Road, District-Nagpur.

... PETITIONERS
(L.Rs. Of Original Plaintiff)

...VERSUS...

1. Kalmana Market Urban Credit
Co-operative Society Limited,
Nagpur having office at Ayurvedic
Layout, Plot No.185, Nagpur

through its administrator.

2. Mr. Pramod S/o Kejodimal Agrawal,
R/o- 'Surya Smit,' Plot No. A-113,
Yogeshwar Nagar, Dighori, Nagpur.
(Amended as per order dated 22/01/2025)

3. Mr. Chandrashekhar S/o Vishwanath Mudliar
aged about 47 year, Occupation-Businessman,
R/o- Plot No.40, Dattatraya Nagar,
District - Nagpur

....RESPONDENTS
(Original Defendants)

WRIT PETITION NO.4796/2024

1. Dr. Yashwant S/o Dadaji Ambatkar,
Aged about 50 years, Occupation-
Doctor, R/o Plot No. 212, Tikekar Road,
Dhantoli, Nagpur.

..... PETITIONER
(Original Plaintiff)

...VERSUS...

1. Kalmana Market Urban Credit
Co-operative Society Limited,
Nagpur through its administrator,
Ayurvedic Layout, Plot No.185, Nagpur

2. Mr. Pramod S/o Kejodimal Agrawal,
R/o- 'Surya Smit,' Plot No. A-113,
Yogeshwar Nagar, Dighori, Nagpur.
(Amended as per order dated 06/02/2025)

3. M/s New Viraj Builders & Developers
Office at Plot No.40, Dattatreya Nagar,
Nagpur through its partner Mr. Chandrashekar

Vishwanath Mudaliar, Aged about 47 years,
Occupation Business.

4. Mr. Shailesh S/o Subhashchandra Katariya
aged about 34 years, Occupation- cultivator,
R/o Gandhi Chowk, Wani, Tahsil Wani,
District Yavatmal.

5. Collector, Nagpur, Collectorate Compound,
Civil Lines, Nagpur.

6. Deputy Registrar, Co-operative Societies (III)
8 Sahkar Sadan, Hindustan Colony,
Nagpur- 440006.

...RESPONDENTS
(Original Defendants)

Shri S.B. Tiwari, Advocate for petitioners
Shri Aadil Mirza, Advocate for respondent No.2
Shri Amit Balpande, Advocate for respondent No.3

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

DATE OF RESERVING THE JUDGMENT : 12/03/2025
DATE OF PRONOUNCING THE JUDGMENT: 16/04/2025

JUDGMENT

. Heard learned Counsel for petitioner and learned Counsel for respondents.

2. Writ Petition No.4620/2024 is filed by Dr. Dadaji s/o Ramaji Ambatdar (dead) through legal representatives Mrs. Shashikant s/o Dadaji Ambatkar and others whilst Writ Petition 4796/2024 is filed by Dr. Yashwant s/o Dadaji Ambatkar. Both the petitioners are legal representatives of Dadaji Ambatkar. Since Writ Petition No. 4620/2024 is taken as lead petition, the facts and contentions of the said Writ Petition are referred herein below for deciding the issue involved in both the Writ Petitions.

3. Being aggrieved by the order dated 06/07/2024, passed by learned Joint Civil Judge Senior Division, Kelapur (Yavatmal), whereby, their application below Exhibit-76 seeking amendment of plaint has been rejected.

4. Petitioners are legal heirs of the original plaintiff Mr. Dadaji, who passed away on 07/04/2021. The respondents are the original party defendants before the learned Trial Court. It is submitted that the original defendant Nos.1 and 2 have been ordered to be deleted by learned Trial Court vide its order dated 10/04/2017. Mr. Dadaji preferred S.C.S. No.28/2013 against the

above referred respondents before the Court of learned Civil Judge Senior Division, Kelapur (Yavatmal). It is the case of Mr. Dadaji that he is the absolute owner of the suit property mentioned therein which he has inherited from his father namely Mr. Ramaji Ambatkar. Respondent No.2 represented himself as the Secretary of the respondent No.1/Society and proposed to purchase the same in his capacity of Secretary of the said Society. Mr. Dadaji was also willing to dispose of his property, sold the entire suit property by executing two sale deeds (both on 11/08/2006) in favor of respondent No.1/Society, acting through respondent No.2. The consideration was partly paid and partly promised to be paid. As the respondent Nos.1 and 2 failed to pay the entire sale consideration as was promised, Mr. Dadaji made further enquiry and came to know that he has been defrauded. The respondent No.1/Society never had an authority to purchase the property form Mr. Dadaji so also respondent No.2.

5. In fact, during the relevant time, the respondent No.2 was not the Secretary of the respondent No.1/Society. The respondent No.2 without any authority under law further sold the

suit property in favor of respondent No.3 which appears to be the sham and bogus transaction. The respondent No.1/Society was subsequently raided by the Income Tax Department, so also the Deputy Registrar, Co-operative (III), Nagpur, appointed Administrator over it. Thus, Mr. Dadaji filed the suit for declaration, permanent injunction and cancellation of sale deeds. An application below Exhibit 76 has been filed by the petitioner seeking amendment of his plaint only respondent No.3 opposed the same and the learned Trial Court rejected the said application below Exhibit 76, which is subject matter of this petition.

6. It is contention of the petitioners that the learned Trial Court misread, misunderstood and misappreciated the material on record to issue the impugned order which is materially irregular and too fragile to sustain. That the learned Trial Court has gone into the merits of the proposed amendment and rejected the application to immense prejudice of the petitioners. The learned Trial Court could not have asked the petitioner to satisfy it about the truthfulness or correctness of the proposed amendment which could have been well left to trial. The learned Trial Court could have

appreciated, the substantial part of the proposed amendment is already the part of record of S.C.S. No.25/13. The learned Trial Court considered the amendment which was extraneous to the application below Exhibit-76 i.e. an amendment which is not proposed to be added by the petitioners. The aforesaid order needs interference by this Court and also needs to be set aside.

7. Learned Counsel for petitioners relied on following citations:

i) *Mahadeo Vs. Balaji and others 2012 SCC OnLine Bom 1283*

ii) Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and ors. 2022 (6) ABR 67

iii) Rajesh Kumar Aggarwal and ors. Vs. K.K. Modi and Ors. 2006 (40) AIC 36

8. Learned Counsel for respondent No.3 contended that the said amendments were nothing but certain orders of the authorities which were way back in the year 2003 onwards till 2009. Thus, these orders were very well known to the present petitioner/plaintiff who filed the suit on August 2013. Similarly, it is

the duty of the present petitioner to raise his claim of amendment by way of supportive documents before the Trial Court. But it appears that the amendment application was not supported with any of the order passed by this authority. Enough opportunity was granted by the Trial Court to produce those order copies but the petitioner/plaintiff was not vigilant to produce the same before the authority. Therefore, the order passed by the learned Joint Civil Judge Senior Division, Kelapur, dated 06/07/2024, needs no interference by this Court.

9. Learned Counsel for respondent No.3 relied on following citations:

i) Basavaraj Vs. Indira and others (2024) 3 SCC 705

ii) Nitaben Dinesh Patel Vs. Dinesh Dahyabhai Patel (2021) 20 SCC 210

10. Heard learned Counsel for the parties. Perused documents and impugned order below Exhibit 76 and considered citations relied on by both the parties. Legal heirs of original plaintiff filed application under Order 6, Rules 17, for amendment

of plaint. By way of this amendment, plaintiff seeks permission to add paragraph Nos. 13-A to 13-F, which he claimed that those are necessary for adjudging validity of the impugned sale transaction. The said application duly replied by the defendants. The Learned CJSD Kelapur, rejected the application. After filing of the application, it appears that the plaintiff as well as their Counsel was absent since long. Even after granting many opportunities to submit the documents in support of their application and to argue on the application but plaintiff deliberately tried to prolong the matter. The learned Trial Court observed that there is no supporting documents to the proposed amendment application filed by the plaintiff. Though, plaintiff wants to amend their suit in regard to the orders passed by the officers of the Co-operative Societies. It is also claimed by the plaintiff that during the pendancy of the suit, they were dispossessed by the defendant No.2 along with other associates and they want to pray for possession of the suit property. The original plaintiff has brought present suit for declaration that the sale deed executed by him in favor of dependent Nos. 3 and 4 of dated 11/08/2006 is illegal, arbitrary and bad in law. So also, sale deed executed by defendant Nos. 3 and 4, in favor of defendant

No. 5 of dated 12/08/2011, is bad in law and unenforceable. He sought for cancellation of those sale deeds. Thereafter, issues were framed and suit was listed for evidence in May, 2017. The plaintiff has filed his affidavit of evidence on 09/03/2018, thereafter, plaintiff was reported to be dead and his legal heirs were brought on record. The learned Trial Court rightly observed that though legal representatives of original plaintiff seeks permission to amend the plaint by way of addition of paragraph 13-A to 13-F, the plaintiffs have not submitted the copies of the said orders on record passed by Divisional Joint Registrar, Co-operative Societies and Deputy Register Co-operative Societies. In absence of those orders it is observed that it would not be safe to allow the plaintiff to amend their plaint about the said orders. Even otherwise, the plaintiff can produce the certified copies of orders passed by the Competent Authorities in kind of documentary evidence and those can be read in evidence. So far as amendment to the extent of dispossession is concerned, there is no supporting documents placed on record. The alleged complaint about dispossession is of the year 2013 and 2014, whereas, the plaintiff's claim is about the declaration, cancellation of the sale deed and perpetual injunction, on the basis of which

alleged possession over the suit property. The learned Trial Court rightly observed that if the plaintiff's proposed amendment is allowed, it should definitely change the nature of the suit.

11. The learned Counsel for the petitioner relied on judgment in ***Mahadeo*** (supra), in support of his contention that Trial in Civil Suit commences from the date of filing of affidavit in lieu of the examination-in-chief of the witnesses and the proviso to the Order 6, Rule 17 of the Code of Civil Procedure will come into play only after stage of filing of affidavit in lieu of examination-in-chief of witnesses. This view is held by this Court in ***Mahadeo*** (supra), while answering to the reference "whether proviso appended to Order 6, Rules 17 of the Code of Civil Procedure, is attracted after framing of the issues or it will come into play only after stage of filing of affidavit/s in lieu of examination-in-chief of witness/es".

12. Learned Counsel for petitioner also relied on judgment of Hon'ble Apex Court in ***Life Insurance Corporation of India versus Sanjeev Builders (supra),*** wherein, Hon'ble Apex Court laid down

certain principles while considering amendment applications. As per these principles, the amendment is applied before commencement of trial, it has to be liberally granted. In other cases unless the amendment would enable the Court to pin pointedly consider the dispute and would aid in rendering a more satisfactory decision. Thus, when the amendment is necessary to resolve real controversy in the matter, such amendment even after commencement of trial can be allowed, if there is sufficient cause to do that.

13. Learned Counsel for petitioner also relied on judgment in ***Rajesh Kumar Agrawal*** (supra), wherein, Hon'ble Apex Court held as under:

"While considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment."

However, in my considered opinion, the facts involved in the matter are distinguishable. The plaintiff by way of amendment put forth the theory of case of dispossession which is contrary to the claim raised earlier.

14. As against this, learned Counsel for respondent relied on ***Basavaraj versus Indira and others*** (supra), wherein, Hon'ble Apex Court held that the proviso to Order 6, Rule 17 of the CPC provides that no application for amendment shall be allowed after the trial has commenced unless the court comes to the conclusion that despite of due diligence the party could not have raised the matter before the commencement of trial. The Hon'ble Apex Court referred to ***Revajeetu Builders and Developers versus Narayanswamy and Sons (2009) 10 SCC 84***, wherein, the Hon'ble Apex Court held that the factors to be taken into consideration by the court while dealing with an application for amendment. One of the important factor is as to whether the amendment would cause prejudice to the other side or it fundamentally changes the nature and character of the case or a fresh suit on the amended claim would be barred on the date of filing of the application.

15. Learned Counsel for respondent placed reliance on ***Nitaben Dinesh Patel*** (supra), in the said judgment the Hon'ble Apex Court clarified law regarding proviso to Order 6, Rule 17. It is held that as per proviso, application for amendment can be allowed after the commencement of trial, only when the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial. However, if some facts come to the knowledge subsequently and subsequent to the commencement of trial, may be during the course of trial and if it is found that it is necessary for the purpose of determining the real question in controversy between the parties, on a fair reading of Order 6, Rule 17, such an application for amendment can be allowed even after commencement of trial. In the present matter, if amendment application is seen, there is no whisper why such application in respect of order of 2009 or any communication by the Income Tax Department was introduced by way of amendment in the plaint. Moreover, it is silent on the issue when these facts were came to the knowledge of the plaintiff, so to attract proviso of Order 6, Rule 17 that in spite of due diligence these orders were not within the knowledge of the plaintiff. So far as forcible possession

of suit property is concerned, the plaintiff claimed that he has filed FIR in 2012 and 2014. Thus, there was no reason given why this fact was not brought on record prior to commencement of trial. The only reason given that after the death of original plaintiff on 07/03/2021, the legal heirs brought on record and it took some time for them in following the track of the case. In my considered opinion, there is no irregularity or illegality in the order passed by learned CJSD Kelapur, specifically when the amendment is filed without any supporting documents and secondly it changes the nature of suit. There is no reason whatsoever given why the application for amendment in respect of dispossession was not filed since 2014 till 08/02/2024. As such, the petition is devoid of any merit and liable to be dismissed. Accordingly, petition stands dismissed.

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

Jayashree..