



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

WRIT PETITION NO. 7305 OF 2024

Alok Vasantkumar Khandelwal, Aged about 57 years,
Occ. Business, R/o : Lotus Court, Ram Nagar, Akola,
Tah. And District : Akola.

PETITIONER

VERSUS

1. VasantKumar Hiralal Khandelwal, Aged 83 years,
Occ. Business, R/o Khandelwal House, (East)
Jatharpeth, Akola, Tah. And Dist. Akola.
2. Sharda Vasantkumar Khandelwal, Aged 77 years,
Occ. Business, R/o Khandelwal House, (East)
Jatharpeth, Akola, Tah. And Dist. Akola.
3. Archana Sandip Gupta, Aged about 51 years,
Occ. Business, R/o 21, Shalimar, Gulmohar Cross
Road No.10, Juhu Scheme, Mumbai-400049.

RESPONDENTS

Shri S.V. Sohoni, Counsel for the petitioner.
Shri M.G. Sarda, Counsel for the respondents.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : OCTOBER 03, 2025

ORAL JUDGMENT

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

2. The petitioner's challenge is to the order passed by the trial Court thereby rejecting the application under Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short, 'the Code') seeking amendment of plaint.

3. The petitioner is the original plaintiff who has filed a suit for partition, possession, mesne profits and permanent perpetual injunction with respect to several properties stated in the plaint. After the written statement came to be filed, the plaintiff filed an application seeking amendment to incorporate challenge to the sale-deeds allegedly executed during the time

when the he was minor. In the said application, the plaintiff stated that the amendment is necessary for effective decision of the entire controversy involved in the matter and the same is filed after he got knowledge about the said transactions. The said application was opposed and by an order dated 20.10.2023, the trial Court rejected the amendment application by mainly observing that the plaintiff had proposed to introduce a time barred claim which changes the nature of the suit. The trial Court also observed that the amendment application is filed after issues were framed and thus after commencement of the trial. Apart from this, trial Court also observed about lack of due diligence on the part of the plaintiff.

4. Assailing the impugned order, Shri S.V. Sohoni, learned counsel for the petitioner vehemently submitted that the amendment is necessary for effective decision of the controversy involved in the suit. He submitted that the amendment application is filed before evidence had begun and the same cannot be rejected only on account of lack of due diligence. He submitted that the plaintiff got knowledge about the transactions with respect to the suit property after the written statement was filed and he is entitled to raise challenge to the sale-deeds since his right to the said properties has been affected. It is submitted that since the amendment is sought before evidence on affidavit is filed in the suit, there is no question of lack of due diligence on the part of the plaintiff. In support of his submissions, he relied on the Division Bench judgment of this Court in ***Mahadeo Versus Balaji & Others*** [(2012) 5 Bom CR 777] and submitted that the position of law is settled that trial in the suit commences on the date of framing of the issues or from the date of filing of affidavit in lieu of examination-in-chief. He also relied on the judgment of the Hon'ble Supreme Court in ***Mohinder***

Kumar Mehra Versus Roop Rani Mehra & Others [(2018) 2 SCC 132] to press his contention that the plaintiff is entitled to raise challenge to the sale-deeds with respect to the properties in which he had a share and the proposed amendment cannot be treated to be a time barred claim.

5. Per contra, Shri M.G. Sarda, learned counsel for the respondents strongly opposed the petition. His primary contention is that the proposed amendment fundamentally changes the nature of the suit and the plaintiff has raised a time barred claim. He submitted that by way of proposed amendment, the plaintiff has attempted to raise a claim after delay of 34 years from attainment of majority. In support of his submissions, he relied on the judgment of the Hon'ble Supreme Court in ***Murugan & Others Versus Kesava Gounder (Dead) through Legal Representatives & Others*** [(2019) 20 SCC 633].

6. Rival contentions, thus, fall for my consideration.

7. The controversy is with respect to the challenge to the order passed by the trial Court rejecting the amendment application. The primary grounds on which the application was rejected are stage of the trial; lack of due diligence; and attempt to introduce a time barred claim. There is no dispute that issues are framed in the suit and evidence on affidavit is yet to be filed. Thus, the question that arises for consideration is whether an application for amendment filed at this stage can be considered to be an application filed after commencement of trial?

On this crucial issue, it is profitable to refer to the judgment of the Division Bench in ***Mahadeo*** (supra) relied upon by the counsel for the petitioner. The Division Bench of this Court has delivered this judgment on reference of two questions of law by the Single Bench, including the

issue as to whether proviso appended to Order VI Rule 17 of the Code is attracted after framing of issues or it will come into play only after filing of affidavit in lieu of examination-in-chief of witnesses? *While answering this issue, the Division Bench has categorically observed that trial in a suit commences from the date of filing of affidavits in lieu of examination-in-chief and proviso to Order VI Rule 17 of the Code will come into play only after the stage of filing of affidavits in lieu of examination-in-chief of witnesses.* Thus, in view of the enunciation of law by the Division Bench of this Court, it is clear that the trial commences after the affidavits in lieu of examination-in-chief are filed. In the instant case, the affidavits in lieu of examination-in-chief are not filed and therefore, the application filed by the plaintiff was required to be considered without giving much emphasis to the aspect of due diligence.

8. Another reason for rejection of the amendment application is that the plaintiff has attempted to introduce a time barred claim. In this regard, the trial Court has observed that the plaintiff should have raised challenge to the sale-deeds within three years from the date of attaining majority by considering Article 60 of the Limitation Act, 1963 and the proposed amendment is an attempt to raise a time barred claim. In this regard, the position of law laid down by the Hon'ble Supreme Court in ***Mohinder Kumar Mehra*** (supra) need to be given proper consideration. While considering an identical challenge, the Hon'ble Supreme Court has observed that the nature of claim sought to be raised by way of amendment needed final adjudication after considering evidence, particularly after considering Article 110 of the Limitation Act, 1963. Relevant paragraphs from this judgment are reproduced below:-

“25. Now, we come to the one of the main reasons given by the trial court in rejecting the application that the claim was barred by limitation. The Nizamuddin property, which property was sought to be added in the suit for partition was a property, which was sold by Respondent 1 in the year 2000, in which the plaintiff was also one of the witnesses. The trial court took the view that the suit was simplicitor for recovery of money for which limitation is only three years from the date of sale and not twelve years as claimed by the applicant. With regard to the limitation, the appellant-plaintiff relies on Article 110 of the Limitation Act, which is to the following effect:

“Article No.	Description of suit	Period of limitation	Time from which period begins to run
	*	*	*
110	By a person excluded from a joint family property to enforce a right to share therein.	Twelve years	When the exclusion becomes known to the plaintiff.”

26. The present is not simply a case of recovery of money. The plaintiff’s claim is to enforce a right to share in the Nizamuddin property, which was sold in the year 2000 and according to the plaintiff, the limitation is twelve years as per Article 110. the High Court has also noted the order of the Additional District Judge holding that claim is barred by time. The High Court refrained from expressing any final opinion on the question of limitation but observed that the view taken by the Additional District Judge is correct. It is relevant to refer to para 28 of the judgment, which is to the following effect:

“The learned Additional District Judge in the impugned order has also accepted the contention of the counsel for the respondent-defendants of the relief sought to be added by way of amendment being barred by time and Articles 106 and 110 of the Schedule to the Limitation Act being not applicable. The counsel for the petitioner-plaintiff has been unable to show any precedent that a claim for a definite share in the sale proceeds of a property would be governed by Articles 106 and Article 110 supra. However, the same being in the nature of entering into the merits of the amendment, I refrain from dealing with the said aspect, though the view taken by the learned Additional District Judge appears to be reasonable and plausible.”

27. *In the facts of the present case, final determination as to whether the claim could be held to be barred by time could have been decided only after considering the evidence led by the parties. Whether the plaintiff had any share in the property, which was sold in the year 2000 and what was the nature of his share and whether he can claim recovery of his share within twelve years, were all the questions on which final adjudication could have been made after considering the evidence and at the stage of considering the amendment in the facts of the present case, it was too early to come to a conclusion that limitation was only three years and not twelve years as claimed by the plaintiff. The High Court on the one hand refrained from expressing any opinion and on the other hand, has expressed his agreement with the view taken by the Additional District Judge rejecting the application as barred by time.”*

9. Considering abovementioned legal position, in the instant case, it has to be seen that the plaintiff is also entitled to raise a challenge to the sale-deeds which are executed during the time when he was minor. The pleas sought to be raised by the plaintiff need to be adjudicated on merits and he cannot be deprived from raising such pleas at an early stage of the suit. The amendment is sought by the plaintiff before commencement of trial and the defendants are entitled to raise the defence available to them. The position of law with respect to the entertaining of an amendment applications is reiterated in several judgments by the Hon’ble Supreme Court holding therein that the amendment applications be generally allowed before commencement of trial. By considering the position of law as laid down by the Hon’ble Supreme Court in *Life Insurance Corporation of India Versus Sanjeev Builders Private Limited & Others* [MANU/SC/1093/2022], the amendment application filed in the instant case was also required to be allowed. The position of law as enunciated by the Hon’ble Supreme Court is reflected in relevant sub-paragraphs of paragraph 71 of this judgment which are reproduced below:-

“71. Our final conclusions may be summed up thus:

71.1.

71.2.

71.3. The prayer for amendment is to be allowed:

71.3.1. If the amendment is required for effective and proper adjudication of the controversy between the parties.

71.3.2.

71.4.

71.5. In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

71.6. Where the amendment would enable the court to pinpointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.”

10. After consideration of overall factual and legal aspects, the reasons for rejection of amendment application do not appear to be proper in the facts and circumstances of this particular case. It has also to be noted that the plaintiff has filed the amendment application after the written statement of the defendants has come on record and before the trial commenced. As such, allowing the plaintiff to amend the plaint will also cause some hardship to the defendants which needs to be compensated by awarding appropriate costs.

11. Having regard to the abovementioned factual and legal aspects, the following order is passed:-

I. The writ petition is allowed.

II. The order dated 20.10.2023 passed by the 3rd Joint Civil Judge (Senior Division), Akola below Exhibit 60 is quashed and set aside.

III. The application for amendment filed by the plaintiff at Exhibit 60 is allowed subject to payment of costs of Rupees Ten Thousand to be paid by the plaintiff to the defendants within a period of four weeks from today.

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

(PRAFULLA S. KHUBALKAR, J.)

APTE