



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4782 OF 2024

1. Ragho Bhagaji Joshi,
Age: 60 years, Occu: Agri.
2. Radhabai Bhagaji Joshi,
Age: 55 years, Occu: Agri,
Both R/o. Tembhurni, Tq. Jafrabad,
Dist. Jalna.

.....PETITIONERS

VERSUS

1. Ramchandra Bhagaji Joshi,
Age: 52 years, Occu: Agri,
R/o. Tembhurni, Tq. Jafrabad,
Dist. Jalna.

.....RESPONDENT

Mr. M. K. Bhosale, Advocate for the Petitioners
Ms. P. V. Langhe, Advocate for Respondent

CORAM : AJIT B. KADETHANKAR, J.

DATED : 30TH MARCH, 2026

ORAL JUDGMENT :-

- . Rule. Rule made returnable forthwith.
2. Heard for final disposal by consent of Mr. M. K. Bhosale,
learned Counsel for the petitioners and Ms. P. V. Langhe,
learned Counsel for respondent.

3. Regular Civil Suit No.76 of 2014 was filed by the present petitioners against the respondent who happens to be real brother of petitioner no.1. Suit was for perpetual injunction restraining defendant from obstructing the peaceful possession of the plaintiffs over the suit land. After hearing the parties the Trial Court decreed the suit and clamped perpetual injunction upon the defendant/respondent.

4. The defendant took exception to the decree passed by the Trial Court and filed Regular Civil Appeal No.10 of 2020 in the Court of learned District Judge-1, Jalna. After hearing the parties, vide its judgment and decree dated 28.04.2022 the District Court partly allowed the appeal and set aside the impugned judgment and decree in the Regular Civil Suit No.76 of 2014.

5. The peculiar facts of the case are that the District Court observed that the suit was defective and in the light of the controversies in between the parties, the plaintiff had to amend the plaint suitably to convert the suit for a prayer as to declaration. These observations were in the light of the law laid down by the Hon'ble Supreme Court in the landmark

judgment of *Anathula Sudhakar Vs. P. Buchi Reddy* Reported in *(2008) 4 SCC 594*. The operative part of the order reads thus:

1. *Regular Civil Appeal No.10/2020 is hereby partly allowed.*
2. *The impugned judgment dated 30/12/2029 passed by the Civil Judge, Junior Division, Jafrabad (the trial court) in the proceeding of RCS No.76/2014 and the decree therein are hereby set aside and the RCS No.76/2014 is remanded back for hearing afresh in the light of the above discussion.*
3. *The parties shall adhere to the time scheduled given in the last paragraph.*
4. *The parties are directed to cooperate the trial court for expeditious disposal of the suit.*
5. *The trial court is requested to decide the suit as expeditiously as possible as.*
6. *A bill of the costs be drawn up accordingly.*
7. *The record and proceedings be sent back immediately to the trial Court.*
8. *Dictated and pronounced in open court.*

6. In view of this some dates are material to be considered. The judgment and decree was passed by the District Court on 28.04.2022. The matter was reached to the Trial Court on 21.06.2022. In terms of the directions of the District Court at paragraph no.19 of the judgment, the petitioner ought to have filed his application for amendment on or before 20.07.2022.

The suit came to be restored on 21.06.2022. The petitioner appeared in the suit on 20.07.2022. Hence, in view of paragraph no.19 of the judgment and order passed by the District Court, the petitioner was under obligation to file his application for amendment on or before 19.08.2022.

7. It is a matter of fact that the petitioner filed his application on 16.12.2022. This application dated 16.12.2022 was contested by the parties before the Trial Court. After hearing the parties, the Trial Court opined that the petitioner did not place absolutely a single word explaining delay. As such, the said application came to be turned down by the Trial Court under Exhibit 53 vide order dated 05.06.2023. The relevant portion of the findings recorded by the Trial Court are as follows: (quote para no.4 and 5 page 48).

4] Perused the record of the case. The original suit was filed for perpetual injunction. It was decreed in favour of plaintiffs. After that defendant preferred an appeal against the said Judgment and Decree by RCS no.10/2020 before Hon'ble District Court, Jalna. As per order in said appeal the matter is remanded back to this court for fresh hearing. The Hon'ble District court gave directions to plaintiffs to amend the plaint pleadings suitably so as to convert the suit as declaration of ownership within 30 days of their appearance before this Court.

5] *In present suit the plaintiffs have appeared before court on 20/07/2022 and the application for amendment is moved on 16/12/2022 i.e. after 30 days of their appearance before the court. It is not the case of plaintiffs that, they were not aware of the order of Hon'ble District Court. Moreover, no reason is mentioned by plaintiffs which precluded them from seeking the relief which they want to claim now by way of amendment. The plaintiffs also not have mentioned reason behind delay for filing present application. It appears that, the plaintiffs have not followed the directions of Hon'ble District Court. The Hon'ble District Court has used word "shall" in his directions given to plaintiffs. It makes it mandatory on plaintiffs to follow said order without fail. However, the plaintiffs have failed to follow the directions given by Hon'ble District Court. It appears that the application is not bona-fide. The plaintiffs cannot be allowed to take advantage of their own wrong without showing any justifiable reason. Hence, the plaintiffs cannot be allowed to make the amendment sought in present application. In result, I pass the following order:*

ORDER

The application is rejected with costs.

8. Instead of challenging this order timely, the petitioner filed another application at Exhibit 63 before the Trial Court seeking the same relief of amendment. Again, this application was contested by the defendants. After hearing the parties at length, the Trial Court vide order dated 05.04.2024 turned down the application below Exhibit 63. The Trial Court also

recorded that the application lacked merits. As such, the petitioners are before this Court.

9. At the outset Mr. M. K. Bhosale, learned Counsel for the petitioners submits that he does not press for any relief pursuant to the application below Exhibit 63. He further submits that the record is before the Court and there is nothing to conceal. He fairly concedes that the application at Exhibit 63 was not happily worded. He submits that in any case the object of remand of the suit was to permit the petitioners to amend the pleadings enabling the Civil Court to arrive at correct conclusion on the precise point in controversy. He would submit that the petition be allowed and directions be issued to the Trial Court to allow the petitioners to amend the pleadings in the suit.

10. Mrs. P. V. Langhe, learned Counsel for the respondent strongly objected the Writ Petition. She would submit that not a single averment is made in the application at Exhibit 53 explaining the delay in filing the said application. She would submit that the defendant would not have objected on technical grounds had the petitioners attempted to give atleast

a single reason explaining the delay. She would submit that the conduct of the plaintiffs is descriptively observed by the Trial Court while passing order on the applications below Exhibit 53 and also on Exhibit 63. She would submit that the purpose of the procedure of law is not to protract the proceedings. She would place reliance on the order passed by the High Court on *Madhya Pradesh at Jabalpur on 28.06.2023* in *Miscellaneous Civil Appeal No.3447 of 2022*.

11. I have gone through the findings recorded by the Madhya Pradesh High Court in the said case. It appears that the facts in the case in hand are a bit different from the said case. In the cited case, the application for amendment was allowed while the earlier application for amendment was rejected by the Trial Court. The other side aggrieved by the amendment was before the High Court, and hence High Court observed that the findings rejecting the application would operate as *res-judicata* for the purpose of subsequent application which is at interlocutory stage. Apparently stage is not the fact in the case in hand.

12. Mrs. P. V. Langhe relied on another order passed by this Court on 28.02.2023 in *Appeal Against Order no.84 of 1995 (Sk. Ibrahim s/o Sk. Mohamood and others)* at Nagpur Bench which is reported at *AIR 2003 BOMBAY 357*. She would submit that in the light of the observations made by this Court in cited case, it was not open for the District Court to grant leave to the petitioners to amend the suit in absence of explicit application by the petitioners.

13. The facts are very clear in this case. The petitioners are indeed in default not only in filing the application by atleast four months of delay, and also in not drafting the application at Exhibit 53 correctly. It is a matter of fact that the suit was filed initially for perpetual injunction. The suit was decreed. In the appeal filed by the present respondent, the District Court observed that the case was fully governed by the law laid down by the Hon'ble Supreme Court in the case of *Anathula Sudhakar* (supra). Their Lordship has laid down guidelines as regards to drafting a suit and and prayers which are necessary in the contingencies of appearing in the suit. In the light of that, the District Court has permitted the plaintiffs to amend the suit within a time frame.

14. Pertinent to note, although Ms. Langhe, learned Counsel for the respondent vehemently rely on the judgment and order passed by this Court in the case of Sk. Ibrahim (supra), it cannot be overlooked that the respondent has not challenged the order passed by the District Court while allowing the appeal. The respondent did not challenge the leave granted by the District Court to amend the suit. Now they can't protest those directions and leave. As such, those findings and directions issued by the District Court are binding on the respondent as the respondent has not challenged those directions. Hence, the judgment cited by Mrs. Langhe in the case of ***Sk. Ibrahim*** (supra) shall not be helpful anymore.

15. Now so far as the amendment in the suit is concerned, I am of the considered view that the petitioners deserve an opportunity of hearing considering close relation between the parties and the nature of litigation as also peculiar facts of the case. The District Court has given reference to the law laid down by the Hon'ble Supreme Court in the case of ***Anathula Sudhakar*** (supra), and this Court cannot overlook that aspect of the matter.

16. In view of the controversy raised before the District Court, it has become necessary that the civil rights of the parties need to be crystallized by granting appropriate declaratory relief in respect of the suit property. With an object to take the controversy to its logical end, the leave to amend suit was granted. The Regular Civil Appeal was allowed keeping in mind the real controversy as regards to declaration of ownership. True that the plaintiff failed to amend the suit timely, but in the interest of justice, the parties need to contest the suit on the point of declaratory relief. Otherwise, the suit shall stand decreed as was decreed earlier.

17. In any condition Ms. Langhe, learned Counsel for the respondent prays to impose exemplary costs on the petitioners for protracting the litigation.

18. In view of the above I deem it appropriate to allow the Writ Petition. Hence, the following order:

ORDER

- i. Writ Petition stands allowed.
- ii. The orders passed by the Trial Court on application below Exhibit 53 and Exhibit 63 are quashed and set aside.

- iii. The petitioners shall carry out necessary amendment in the Exhibit 1 within a period of two weeks from today.
- iv. The Trial Court then shall proceed in accordance with law.
- v. Considering the age of the litigation, the Trial Court is requested to conclude the trial hearing within a period of one year from today.
- vi. The Petitioners shall pay costs of Rs.15,000/- to the defendant to be deposited in the Trial Court within a period of two weeks from today.
- vii. Failure to deposit the costs and to carry out the amendment shall nullify the effect of this order.
- viii. Rule made absolute in above terms.
- ix. Writ Petition stands disposed of accordingly.

(AJIT B. KADETHANKAR, J.)