



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 12722 OF 2024

MOHAN RAMJI KHATANE AND OTHERS
VERSUS
SAHEBRAO ARJUN HON AND OTHERS

...
Mr. S. S. Kazi, Advocate for the Petitioners.

Mr. S. G. Sonawane, Advocate for Respondent Nos.1 to 3.

...
**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 21st JANUARY, 2026.**

P.C.:-

1. The present Writ Petition takes exception to order dated 06.07.2024 passed below Exhibit-69 by Civil Judge Senior Division, Vaijapur in Regular Civil Suit No.314/2018, whereby petitioners' application seeking amendment in plaint has been rejected.

2. The petitioners instituted Regular Civil Suit No.314/2018 seeking relief of declaration of ownership and perpetual injunction. It is contention of plaintiffs that suit lands were originally owned by one Mohiniraj S/o. Govind Narayanrao. Thereafter, petitioners inherited property. It is further asserted that petitioners' predecessors have executed nominal sale deeds in favour of defendants towards security of loan. Although, possession of properties continued with petitioners, names of defendants/respondents were mutated in record of rights.

3. The defendants appeared in suit and contested claim. The Trial Court framed issues and relegated parties to trial. The

petitioners/plaintiffs recorded their evidence and one more witness. As such, after commencement of trial, they filed application under Order VI Rule 17 of Code of Civil Procedure seeking amendment in plaint.

4. It is contention of petitioners that they had scanty knowledge of procedure of Court and law. Their Advocate wrongly drafted suit or prosecuted case. During cross-examination of petitioners witness, various revenue entries were revealed, which shows that petitioners' father namely Ramchandra Khatane was declared as permanent tenant and his name was shown till 1965 to 1966 in cultivation column. Therefore, petitioners sought leave to amend and bring pleading that petitioners' father was protected tenant over suit property and seeks such declaration.

5. Apparently, petitioners wish to introduce pleadings that would change nature of claim. Initially, petitioners sought declaration of ownership in respect of suit property. However, by way of amendment wants to insert pleading that plaintiffs' father was protected tenant and seeks declaration to that effect. Pertinently, amendment is sought to be brought after recording of evidence of two witnesses i.e. after commencement of trial. No explanation is given as to why such amendment was not brought at initial stage or atleast before commencement of trial. Mere

explanation sought to be given that Advocate before Trial Court took wrong plea. Such contention cannot be countenanced.

6. Mr. Kazi, learned Advocate appearing for petitioners relying upon judgment of this Court in case of *Funds and Properties of Parsi Punchayet and Others Vs. Minoo Keki Mistry and Others*¹ and *Anil and Others Vs. Pratibha Pandurang Dhepe and Others*² contends that inconsistent pleas cannot be debarred, when such pleading is brought by way of alternate prayer. In present case, such is not a case. The petitioners are bringing absolutely inconsistent case, contrary to case pleaded in original plaint. In absence of explanation as mandated under Proviso to Rule 17 of Order VI of Code of Civil Procedure amendment cannot be permitted at belated stage.

7. In that view of matter, this Court do not find jurisdictional error in impugned order. Hence, Writ Petition stands dismissed.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/January-2026

¹ (2025) 1 AIR Bom R 345.

² (2025) 3 Mah LJ 663.