



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2797 OF 2025

Sheetal Yuvraj Patil And Others

VERSUS

Jaishree Chandrakant Patil And Others

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Mr. A. R. Vaidya, Advocate for the Petitioners

Ms. Anjali Dube, Advocate for Respondent Nos. 1 and 2

CORAM : S. G. CHAPALGAONKAR, J

DATE : APRIL 07, 2026

PC :

1. The Petitioners impugn order dated 04.07.2024 passed below Exhibit 59 in Special Civil Suit No. 96/2015 whereby Petitioners' application for amendment in plaint has been rejected.

2. Mr. Vaidya, learned Advocate appearing for Petitioners, submits that Petitioners have filed Special Civil Suit No. 96/2015 seeking decree for partition and separate possession in respect of suit properties. While drafting application, one of property was excluded from inclusion of suit properties for the reason that suit property was in possession of tenant. However, later on Petitioners came to know that Respondents are receiving rent from tenant and, therefore, sought amendment of plaint and inclusion of property as a suit property. The Trial Court refused to entertain application filed by Petitioners on ground that Petitioners are trying to incorporate contrary plea or

withdraw admission given in plaint.

3. Perusal of the pleadings shows that in paragraph 8 of plaint, Petitioners have pleaded that Plaintiffs and Defendants having ancestral joint family house property, which forms part of CTS No. 7629 bearing M. C. House No. R-4-3061 situated at Papvinash Road, Latur, some portion of house property is in dilapidated condition and some of portion is in possession of tenants. There is dispute of tenants regarding this property and hence, Plaintiffs are not interested in said property and, therefore, they have relinquished their rights in respect of said property.

4. Perusal of aforesaid pleadings suggest that Plaintiffs have shown willingness to relinquish their share in suit property for reason as stipulated in pleadings, however, now Plaintiffs have shown that Defendants are receiving rent in suit property and, therefore, Plaintiffs are entitled for share in rent. Amendment is sought for that purpose. Admittedly, at time of filing of application for amendment trial was not commenced. It was, therefore, open for Defendants to file written statement to the amended plaint and also cross-examine Plaintiffs on all relevant aspects of matter.

5. In aforesaid backdrop, considering law laid down by

Supreme Court in case of *Life Insurance Corporation Private Limited vs. Sajeed Builders Pvt. Ltd.*, (2022) 16 SCC 1, there was no impediment in allowing application. Trial Court is not justified in observing that permitting amendment would amount to permitting withdrawal of admission in the suit.

6. In that view of matter, Writ Petition is allowed in terms of prayer clause 'B', subject to condition that Petitioners depositing cost of Rs.5,000/- (Rupees Five Thousand Only) in Trial Court within period of four weeks from today. On deposit of cost, it be paid to Respondents.

(S. G. CHAPALGAONKAR, J.)

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