



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

WRIT PETITION NO.12408 OF 2025

Asharam Balbhim Jogdand,
Age: 67 years, Occu. Agri.
R/o. Jamb, Tal. Bhoom
Dist. Dharashiv.

..Petitioner
(Orig. Plaintiff)

Versus

Mahadeo Baburao Muluk,
Age: 80 years, Occu. Agri.
R/o. Jamb, Tal. Bhoom,
Dist. Dharashiv.

..Respondent
(Org. Defendants)

...
Mr. V. S. Undre, Advocate for the Petitioner.
Mr. K. R. Doke, Advocate for Respondent.
...

**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 12th FEBRUARY, 2026.**

FINAL ORDER:-

1. The present Writ Petition is filed with following prayers:

“A] By issuing the writ of certiorari or any other writ in the like nature, this Hon'ble Court may kindly be pleased to quash and set aside the impugned Order bellow Exh.185 in RCS No. 334/2003 dated 19.09.2025 passed by the LD. Civil Judge Junior Division at Bhoom Dist. Dharashiv and further be pleased to allow the application Exh.185 in RCS No. 334/2003 filed by the petitioner before the Ld. Trial court”

2. The petitioner instituted Regular Civil Suit No.334/2003 before Civil Judge Junior Division at Bhoom, District Dharashiv seeking relief of removal of encroachment and recovery of possession in respect of suit property situated at village Jamb,

Taluka Bhoom. The suit was decreed by judgment and order dated 15.03.2011 and respondent was directed to hand over vacant possession of encroached area of 1H 25R from Gut No.291 and 0.28R from Gut No.292 to petitioner.

3. Aggrieved defendant filed Regular Civil Appeal No.180/2014 before District Judge at Bhoom. The Appeal was allowed holding that measurement map relied by Trial Court was unilateral and Cadastral Surveyor had measured land of plaintiff only. Accordingly, matter was remanded back with direction to appoint TILR as Court Commissioner for joint measurement. After remand of suit, petitioner/plaintiff had filed application below Exhibit-144 seeking amendment of plaint, which was allowed vide order dated 07.04.2021. Thereafter, matter proceeded to final stage of argument.

4. At this stage, petitioner/plaintiff filed another application below Exhibit-185 seeking amendment in plaint to incorporate events regarding sale deed of 2023 and also sought to insert additional prayer of declaration of ownership in respect of Gut Nos.291 and 292. The Trial Court refused to entertain application and rejected with cost of Rs.4000/-.

5. Mr. Undre, learned Advocate appearing for petitioner would submit that petitioner wanted to bring on record sale deed

executed in name of petitioner's wife in respect of 40R land from Gut No.292 and also wanted to incorporate relief regarding declaration of ownership. According to Mr. Undre, no prejudice would have been caused to the defendant, rather it would have assisted Court in determining controversy between parties without indulging in multiplicity of litigation.

6. Per contra, Mr. Doke, learned Advocate appearing for respondent would submit that after remand of matter, petitioner has adopted dilatory tactics and protracted hearing of suit on various count. He would point out that in year 2021, petitioner filed application for amendment, which was allowed. The facts sought to be brought on record were within knowledge of plaintiff. However, application for amendment was tendered, when matter was posted for final argument in year 2025. No explanation is given for delay in filing application for amendment.

7. Having considered submissions advanced by learned Advocates appearing for respective parties and on perusal of observations made by Trial Court it is evident that suit is pending since 2003. It was previously decided. However, remanded back by District Court for limited purpose of joint measurement of land through Cadastral Surveyor, as controversy between parties was regarding encroachment. In this background, in year 2025, when suit reached at final stage of argument, application is filed for

amendment. The proposed amendment pertains to so called sale deeds executed during period from 2015 to 2023. The petitioner had knowledge of all such transactions. However, till last stage of hearing, petitioner did not file application for amendment. After recording of evidence of parties, an attempt is made to bring on record aforesaid facts and also insert relief seeking declaration of ownership.

8. The application Exhibit-185 is silent about reasons as to why application for amendment was not made at early stage. In wake of aforesaid background Proviso to Rule 17 of Order VI of Code of Civil Procedure comes into play. The Court cannot allow amendment after commencement of trial, unless there is sufficient explanation depicting that plaintiff was precluded by sufficient cause from bringing amendment at early stage of hearing. No such explanation is appearing in application.

9. The petitioner's suit is basically for removal of encroachment. The Cadastral Surveyor has already submitted report depicting area of encroachment. Therefore, at this stage bringing on record subsequent sale deed executed in name of petitioner's wife or inserting prayer for declaration of ownership would change entire complexion of suit. The amendment of such nature is rightly rejected by Trial Court under impugned order. No jurisdictional

error is discernible so as to invoke extraordinary jurisdiction under Article 227 of Constitution of India.

10. In result, Writ Petition stands dismissed.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/February-2026