



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

14 WRIT PETITION NO. 12496 OF 2025

Alka Kailas Dighe

VERSUS

Yashwant Ramji Jagtap Dead And Others

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Advocate for Petitioner : Mr. R.L. Kute

CORAM : S. G. CHAPALGAONKAR, J.

Dated : January 12, 2026

PER COURT :-

1. Present writ petition takes exception to the order dated 25.08.2025 passed below Exhibit-80 in R.C.S. No.733 of 2012 by the Civil Judge, J.D. Sangamner.

2. The petitioner is original defendant no.7 in R.C.S. No.733 of 2012. Respondent nos.7 to 10 instituted the suit for partition and separate possession of the ancestral property. It appears that when proceeding in suit had reached to final stage after conclusion of arguments, respondent nos.7 to 10 filed an application below Exhibit-80 seeking amendment in the plaint, particularly, contending that daughter of Minabai namely Sangita was missing since last 15 years. Sangita is necessary party to the suit for partition, although she is missing. Her son is also sought to be added as party by the

proposed amendment. It is contended that proposed amendment would not change nature of the suit. Accordingly, Sangita and her son Rahul were proposed to be added as defendant nos.8 and 9. Trial Court allowed said application vide impugned order.

3. Mr. Kute, learned counsel appearing for the petitioner raises two fold objection to the amendment. According to him, amendment could not have been entertained at the belated stage when trial had reached to the stage of arguments. Secondly, whereabouts of Sangita are not known, there is no declaration that she is dead. There is no certificate of L.Rs. declaring that Rahul is son of Sangita. Therefore, amendment could not have been allowed.

4. Perusal of reasoning adopted by the Trial Court would show that since suit is for partition and separate possession and defendants have raised objection of non-joinder of necessary parties in paragraph no.3 of the written statement, addition of Sangita or her son is held imperative to decide the controversy between the parties. Trial Court has also given reference to observations of the Supreme Court in case of **Rajkumar Gurawara Vs. S.K. Sarwagi and Co. reported in**

(2008) 14 SCC 364, to observe that merits of the amendment cannot be considered while allowing the application.

5. Recently, the Supreme Court of India in case of **Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and another reported in (2022) 8 SCR 1121** has laid down parameters for grant or refusal of the amendment. It is true that generally amendment cannot be allowed once the trial is commenced. However, powers of the Court are not taken away to grant such amendment, if it is necessary for final adjudication of lis between the parties. Present suit is filed for partition and separate possession. One of the objection that was raised in the written statement is regarding non-joinder of the necessary parties. Now, the plaintiff has taken a corrective steps to bring Sangita and her son as defendants in the suit. Needless to state that, defendants are entitled to raise defences against addition of legal heir of Sangita, who is brought as legal heir without certificate by Competent Court. The contentions regarding merits of the matter, particularly, addition of defendant nos.8 and 9 are always open to be argued in the trial. No prejudice appears to have been caused

to the petitioners in light of grant of amendment under the impugned order.

6. In that view of the matter, this Court do not find any jurisdictional error to cause interference under Article 227 of the Constitution of India. In result, writ petition stands **rejected**.

(S. G. CHAPALGAONKAR, J.)

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