



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

70 WRIT PETITION NO.1405 OF 2026

Shankarrao Shripatrao Ghodake And Another

VERSUS

Bharatrao Shripatrao Ghodake Since Deceased Thr. Lrs. Anant
Bharat Ghodake And Others

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Advocate for Petitioners : Mr. M.S. Kulkarni

Advocate for Respondents 1a to 1d : Mr. A.S. More

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : March 09, 2026

FINAL ORDER :-

1. Present writ petition takes exception to the order dated 31.10.2025 passed below Exhibit-257 in special Civil Suit No.1 of 2025 pending before the learned Civil Judge S.D, Tuljapur, whereby application filed by the petitioners/defendants seeking amendment in written statement has been rejected.

2. Heard Mr. Kulkarni, learned advocate appearing for petitioners. Mr. More, learned advocate appears for respondent nos.1-A to 1-D/original plaintiffs (contesting respondents) and he accepts notice for them. Notice for respondent nos.2 to 32 would not be necessary in view of limited controversy raised in this petition.

3. Learned advocate appearing for petitioners and contesting respondents insisted for final disposal of the matter at admission stage, accordingly advanced their submissions.

4. Respondents/plaintiffs instituted suit for partition and separate possession of ancestral property. The petitioners/defendants appeared in the suit and filed written statement thereby raising contention that all joint family properties are not brought in common hotchpotch, therefore suit is not maintainable in present form. The Trial Court framed issues, evidence of plaintiffs was recorded. In cross-examination on behalf of defendants, plaintiff was put suggestion as regards to existence of joint family property in survey no.88, survey no.442, etc. An objection was raised on behalf of the plaintiffs that in absence of specific pleadings in written statement about aforesaid properties, questions in respect of those properties cannot be permitted.

5. At this stage, petitioners filed application below Exhibit-257 seeking permission for amendment in written statement to incorporate particulars of aforesaid properties in deference to defence already incorporated in paragraph no.6 of written statement. The Trial Court declined permission to amend

written statement for reason that due diligence as contemplated in proviso to Order VI Rule 17 has not been complied with. Pertinently, Trial Court observed that proposed amendment does not introduce new defence and same is in consonance with the plea already setup in paragraph no.6 of the written statement.

6. It is trite that the pleadings shall consist statement of facts. The evidence need not be pleaded. In the present case, pleadings in paragraph no.6 of written statement clearly depict that petitioners/defendants have pleaded that all ancestral properties are not brought into common hotch-potch. In deference to aforesaid defence, cross-examination was conducted and plaintiff was put to suggestion as regards to the ancestral properties which are not included as suit properties. Aforesaid part of cross-examination is in fact suggestion given to witness in deference to the defence already put forth in the written statement. Therefore, although, there is no stipulation in the written statement as regards to aforesaid properties, there was no impediment for defendants to extract admission from plaintiffs as to existence of property and joint nature of such properties or put suggestions giving reference of properties not included in suit. Therefore, Trial Court may be

right in refusing the amendment, however, absence of the pleadings as to properties shall not be impediment for defendants to put up their defense in cross- examination giving reference to such properties.

7. In that view of the matter, this Court do not find necessary to interfere in the impugned order. However, trial court shall consider observations made here-in-above during course of further proceedings. Writ Petition stands **disposed of**.

(S. G. CHAPALGAONKAR, J.)

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