



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.1483 OF 2026**

1. Sachin S/o Vitthal Ghodele,
Age: 38 years, Occu: Contractor,
R/o. Laxmiwadi, Padampura,
Aurangabad.

2. Ganesh S/o. Sitaram Ghodele,
Age: 45 years, Occu: Nil,
R/o. Laxmiwadi, Padampura,
Aurangabad.

3. Kishor S/o Sitaram Ghodele,
Age: 40 years, Occu: Service,
R/o. Laxmiwadi, Padampura,
Aurangabad.

..Petitioners

Versus

1. Dilip S/o. Premraj Ghodele,
Age: 58 years, Occu: Contractor,
R/o. "Radha Prem Niwas",
Plot No.68, Vedant Nagar, Itkheda,
Paithan Road, Aurangabad.

2. Smt. Savitribai Wd/o. Premraj Ghodele,
Since died through L.Rs.

2A. Dilip Premraj Ghodele,

2B. Rekhabai Shital Kumawat,
Age: Major, Occu: H.H.
R/o. Same as Respondent No.1.

..Respondents.

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Mr. S. V. Natu, Advocate for Petitioners.
Mr. A. D. Kasliwal, Advocate for Respondents.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 17th FEBRUARY, 2026.**

JUDGMENT:-

1. Rule. Rule made returnable forthwith. By consent of parties, matter is taken up for final hearing at the admission stage.

2. Leave to amend is granted. Amendment to be carried out forthwith

3. The petitioners takes exception to order dated 17.12.2025 passed below Exhibit-24 by District Judge-3, Aurangabad in Regular Civil Appeal No.50/2022, whereby petitioners' application seeking amendment in written statement at appellate stage has been rejected.

4. The petitioners were defendants in Regular Civil Suit No.205/2019. The suit has been instituted by respondents seeking recovery of possession in respect of Municipal House No.5-13-15 as well as relief of perpetual and mandatory injunction against petitioners. It is contention of respondents that Mr. Premraj Ghodele i.e. father of respondent no.1 and husband of respondent no.2 purchased suit property under registered sale deed. He is exclusive owner and possessor of suit property. After his death, respondents have acquired ownership and possession. However, petitioners illegally encroached on suit property.

5. The petitioners filed written statement claiming their rights in property. They stated that Premraj Ghodele i.e. respondents' father and other family members were jointly carrying business and income derived from such business has been used for purchase of suit property. Since Premraj was elder/educated person in

family, property was purchased in his name out of joint family funds. In year 1980, partition took place amongst members of joint family and suit property has been allotted to share of father of petitioner no.1. Since then, petitioners are in possession of suit property.

6. The Trial Court framed issues based on pleadings, recorded evidence of parties and ultimately decreed suit holding that respondents are entitle for possession of encroached portion of 1754 sq. fts in Municipal House No.5-13-15 i.e. CTS No.20114 situated at Laxmiwadi, Padampura, Aurangabad. Aggrieved petitioners filed Regular Civil Appeal No.50/2022 before District Court at Aurangabad. The Appeal is pending for adjudication. At this stage, petitioners filed application below Exhibit-24 seeking permission to amend written statement contending that certain material particulars are missing in written statement. Resultantly, Trial Court concluded that petitioners could not explain relevancy of documents tendered by them. According to petitioners, amendment in the nature of clarification would be necessary to effectively adjudicate controversy between parties. The application was strenuously opposed by respondents contending that reasons explaining due diligence are absent in application. The Appellate Court observed that proposed

amendment would not be necessary to adjudicate dispute between parties, hence rejected.

7. Mr. Natu, learned Advocate appearing for petitioners, submits that although petitioners' application for proposed amendment running in 36 paragraphs, petitioners restricts same only to the extent of incorporating explanation in support of documentary evidence already admitted in evidence. He would, therefore, restrict claim for amendment proposed in paragraph nos.21 to 24 and 27 of application Exhibit-24. Mr. Natu would submit that proposed amendment is merely explanatory or clarificationary in nature and does not change nature of defence. Mr. Natu on instructions from petitioners undertakes that if aforesaid limited amendment is allowed, petitioners would not seek leave to lead additional evidence or remand of matter on that basis. In support of his contentions, Mr. Natu relies upon observations of this Court in cases of *Mahendrakumar Bhagwatiprasad Agrawal Vs. Virendra Bhagwatiprasad Agrawal*¹, *Hasinabi w/o Abdul Latif Vs. Mohammad Sharif and Others*² and *Piedade Fernandes Vs. Charlene Leitao*³.

8. Per contra, Mr. Kasliwal, learned Advocate appearing for respondents/plaintiffs would submit that proposed amendment is in respect of facts, which were well within knowledge of defendants

¹ 2015 (1) Mh.L.J. 403.

² 2024 (4) Mh.L.J. 129.

³ 2012 (1) Mh.L.J. 317.

since before filing of written statement. There is no explanation for not incorporating such facts in written statement or bringing amendment during pendency of suit. The application for amendment filed at appellate stage cannot be considered, unless due diligence clause contemplated under Rule 17 of Order VI of Code of Civil Procedure is complied. He would rely upon observations of Supreme Court in case of ***Chander Kanta Bansal Vs. Rejinder Singh Anand***⁴.

9. Having considered submissions advanced by learned Advocates appearing for respective parties and on perusal of record tendered into service, it can be observed that while respondents are claiming exclusive ownership over suit property, petitioners are asserting their rights on the basis of partition in family. The petitioners are trying to assert their ownership and long standing possession over suit property. The petitioners lead oral and documentary evidence before Trial Court by filing various documents depicting division and sub-division of CTS No.20114 and corresponding change in Municipal house numbers. The petitioners endeavours to bring on record fact of their continuous and uninterpreted possession to counter respondents' contention regarding encroachment.

⁴ AIR 2008 SCC 2234.

10. Apparently, petitioners have filed elaborate written statement taking all possible plea in defence. The Trial Court on appreciation of evidence, decreed suit of plaintiffs and observed that petitioners could not explain relevancy of documentary evidence. In paragraph nos.15 to 22, Trial Court considered defence of petitioners. In paragraph no.5, Trial Court has observed that perusal of tax receipts and electricity bills Exhibits-83 to 99, it is seen that they are of House No.5-13-15/1, which is suit property. The portion of House No.5-13-15 is extended as House No.5-13-15/1 and different from suit property and just adjacent to it.

11. It appears that, petitioners want to explain aforesaid anomaly by way of amendment and synchronize contents of evidence already lead with pleading in written statement. This Court finds that if restricted claim for proposed amendment to the extent of paragraph nos.21 to 24 and 27 is considered, it would be mere explanatory in nature and does not constitute pleading incorporating new claim or inconsistent claim, which is already pleaded in written statement.

12. At this stage, reference can be given to observations of this Court in case of ***Hasinabi w/o Abdul Latif*** (supra), wherein after considering general rules laid down by Supreme Court it is observed that “*if Court finds that amendment sought is imperative for proper and effective adjudication of case and amendment is only*

to clarify contents of written statement or documentary evidence already tendered in service and no malafide intention on part of defendants is discernible, amendment can be allowed by adequately compensating plaintiffs in terms of money.”

13. It is trite that, if amendment is necessary to effectively adjudicate dispute between parties and does not seriously prejudice rights of other parties, same can be allowed even at appellate stage. This Court on consideration of nature of proposed amendment and dispute in suit holds that proposed amendment would facilitate effective adjudication of *lis* between parties without causing prejudice to plaintiffs. The amendment being clarificationary in nature, there is no impediment in permitting it, particularly when petitioners undertakes that they would not lead additional evidence or seek remand of matter on the basis of pleading proposed to be incorporated by way of amendment. Hence, following order:

ORDER

- a. Writ Petition is partly allowed.
- b. The application Exhibit-24 filed in Regular Civil Appeal No.50/2022 pending before District Judge-3, Aurangabad is partly allowed to the extent of proposed amendment in paragraph nos.21 to 24 and 27 only.

- c. Amendment to be carried out within period of four weeks from date of this order.
- d. Since petitioners undertakes that they shall not claim any right to lead additional evidence in pursuance to amended pleading or remand of matter by reason of additional pleading incorporated in pursuance to amendment, learned District Judge shall not entertain any such prayer on behalf of appellants.
- e. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/February-2026