

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2434 OF 2026

Madhav Hawagi Malshette Died And Others

VERSUS

Sushma Nagnath Malshette And Another

...

Advocate for the Petitioner : Mr. Ajinkya Kale i/b Talekar And
Associates

...

CORAM : S. G. CHAPALGAONKAR, J.

DATED : MARCH 07, 2026

PER COURT :-

1. Present writ petition takes exception to order dated 02.01.2026 passed by Civil Judge Junior Division, Loha in R.C.S. No.88 of 2006, whereby application filed by respondents/plaintiffs seeking amendment in plaint has been allowed.

2. The respondents/plaintiffs have instituted suit for partition and separate possession. During pendency of suit, because of death of parties, it was found necessary to amend prayer clause in respect of shares to be allotted to parties. Accordingly, plaintiffs made application below Exhibit-76. The Trial Court allowed said application vide impugned order dated 02.01.2026.

3. Mr. Kale, learned advocate appearing for petitioners/defendants submits that previously plaintiffs had filed an application below Exhibit-61 seeking amendment in plaint. The said application was rejected. He would, therefore, submit that subsequent application could not have been entertained.

4. Perusal of impugned order would show that during pendency of partition suit, defendant nos.1, 2 and 4 expired. Resultantly, there would be natural change in composition of shares to be allotted by succession. The amendment permitted under impugned order is only to the extent of claim/prayer for particular shares on the basis of changed composition of shares. This Court finds that such amendment is necessary for effective adjudication of dispute between the parties. Even otherwise, irrespective of prayers in suit, Trial Court will have to decide shares of parties in accordance with Succession Act. Therefore, no prejudice is caused to petitioners by amendment permitted under impugned order.

5. In result, this Court do not find any reason to cause interference in impugned order under Article 227 of Constitution of India. Hence, writ petition stands rejected.

(S.G. CHAPALGAONKAR, J.)