IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5178 OF 2026

Dilip Sahebrao Shinde … Petitioner

Vs.

Subhash Chandar Chavan and Ors. … Respondents

UDAY SHIVAJI JAGTAP
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Date: 2026.10.26 14:37:39 +0530

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Mr. Dhananjay Rananaware a/w Somnath Chavan, Shubham Dhobale for the Petitioner

Mr. R.C. Barge a/w V.S. Ghatge for the Respondents

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CORAM : SHAILESH P. BRAHME, J.

DATE : 23rd OCTOBER, 2026.

P. C. :

. Heard both sides.

2. Being aggrieved by order dated 03.04.2024 passed below Exh.305 in R.C.S. No.1 of 2011 rejecting the application for amendment to written statement, the petitioner who is the defendant No.5, has approached this Court.

3. The respondent Nos. 1 to 5 have filed R.C.S. No.1 of 2011 for declaration. The petitioner is the defendant No.5 who contested the suit by filing written statement. The issues were settled and parties adduced oral evidence. When the matter was at the stage of final argument, Application Exh.305 was submitted by the petitioner under Order VI Rule

17 of the Civil Procedure Code seeking amendment to written statement i.e. incorporation of paragraph no.5A. It is objected by the respondents and the objection was sustained by the impugned order.

4. Learned counsel for the petitioner submits that test of due diligence is satisfied by the contents of the Application Exh.305. There is checkered history between the parties and the petitioner was not armed with 32M certificate. The proposed amendment will not surprise the respondents because already there is a foundation in the written statement. It is submitted that to decide the real controversy between the parties, amendment is necessary. The proposed amendment is stated to have repercussions on the jurisdiction of the Court. The application cannot be rejected out rightly, but equity can be adjusted by imposing the cost.

5. Per contra, learned counsel Mr. Barge appearing for the respondents vehemently submits that the application has been filed in a casual manner without disclosing due diligence. The trial Court was precluded from entertaining such application after commencement of the trial. Application Exh.305 is vague and it is not disclosed as to when the application was made to secure the copies and other material particulars. It is submitted that already there was exchange of notices in this regard

on 09.12.2023 and 22.12.2023 but no steps were taken by the petitioner promptly.

6. I have considered rival submissions of the parties. The controversy pertains to the agricultural lands being Survey Nos. 54, 78, 55 and parts thereof. The reliefs solicited in respect of 37R of Survey No.78/1 pertains to the present petitioner. Against him the relief of declaration is solicited. In paragraph no.5 of the written statement it has been specifically averred that grand father of the petitioner is the tenanted purchaser, who was conferred title by following due procedure of law and record of right was also mutated.

7. The present is not the only litigation between the parties. There is no reason to disbelieve the submissions of the learned counsel for the petitioner that due to previous litigation it was not possible for the petitioner to have the relevant documents. The mutation entries No.11838 and 11839 are founded on the 32M certificates. Those two certificates issued on 02.01.1982 and 31.01.1986 under Section 32M are placed on record. The certificates have a presumptive value. It would be impracticable to discard them by adopting hyper technical approach.

8. The applicant should have been more specific while filing application under Order VI Rule 17 of the CPC after commencement of

the trial. The explanation tendered for not producing those certificates at earlier point of time cannot be discarded. I find that in given facts and circumstances of the case, the petitioner satisfies the test of due diligence. It is not rule of thumb that parties are precluded from seeking amendment after commencement of the trial. If the proposed amendment is necessary to decide the controversy involved in the matter and / or if it is to avoid multiplicity of the proceedings, the Court is empowered to permit such amendment. I do not find that the respondents would be caused grave prejudice.

9. Learned counsel for the respondents has placed on record notices dated 09.12.2023 and 22.12.2023. I have already observed that petitioner should have been more cautious in promptly producing the documents or seeking amendment. I deem it appropriate to grant one opportunity to the petitioner to introduce the pleadings and documents.

10. It is submitted by learned counsel for the petitioner that the proposed pleadings are necessary not only to decide the controversy but it has repercussions on the jurisdiction of the Court. At this stage, it is not proper to record any findings but the necessity to permit the amendment is fortified.

11. Learned counsel for the respondents relied on the judgment of the

Vidyabai and Ors. Vs. Padmalatha and Anr. 2009 (4) Mh.L.J. 30 to buttress the principles laid down in paragraph nos. 7, 8, 11, 12 and 13 of the judgment. The ratio laid down therein cannot be disputed and binding upon the Courts but that cannot be made applicable in the present case. The Court needs to adopt liberal approach in case of amendment to the written statement which is highlighted by latest decision in the case of **Life Insurance Corporation of India Vs. Sanjeev Builders Pvt. Ltd. & Anr.** (2022) SCC Online SC 1128 in it's paragraph No.25. I am, therefore, inclined to allow the petition by imposing costs.

12. The Writ Petition is allowed. The impugned order is quashed and set aside.

13. Application Exh.305 stands allowed on the condition of payment of Rs.30,000/- within a period of four (04) months to the respondents – plaintiffs.

(SHAILESH P. BRAHME, J.)