

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

18 WRIT PETITION NO. 2952 OF 2025

DINKAR KESHAV DEVKAR DECD THROU. LEGAL HEIRS

VERSUS

SHIVAJI KESHAV DEVKAR AND ORS

...

Mr. Mahesh Bhosale, Advocate h/f Mr. B.S. Shinde, Advocate for petitioners

Mr. K.J. Phakade, Advocate h/f Mr. S.C. Mangle, Advocate for respondent

Nos.1, 2 and 11

Mr. Shankar Katkar, Advocate h/f Ms. Manisha Devkar, Advocate for

respondent Nos.3 to 10

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 11th JUNE, 2026

ORDER :

. Present petition has been filed to challenge order below application Exh.149 in Regular Civil Suit No.256/2017 pending before learned Civil Judge Junior Division, Dahiwadi, Dist. Satara dated 10.01.2025, thereby the application under Order VI Rule XVII of the Code of Civil Procedure, 1908 came to be rejected.

2 The predecessor of the present petitioners late Shri. Dinkar

Keshav Devkar filed Regular Civil Suit No.256/2017 on 09.10.2017. It was for declaration and injunction. He had contended that defendant Nos.1 and 2 are his brothers. He resides in Mumbai. He has purchased part of the property on 17.04.1968 and thereby became the owner of suit property. He contended that behind his back the defendants have got their names mutated by conspiring with the Tahsildar and, therefore the suit was filed. During the pendency of the suit said Dinkar Devkar expired and his legal heirs have been brought on record. In the meantime, the written statements have been filed before the trial Court. At Exh.149 an application under Order VI Rule XVII and Order I Rule X with Section 151 of the Code of Civil Procedure came to be filed. Thereby the petitioners wanted to add the averments in the plaint and in the prayer clause some more declarations' injunction getting certain sale deeds and partition deed set aside was added and the prayer for possession of the properties therein was also added.

3 Defendant Nos.1 and 11 have strongly opposed the application by filing their say at Exh.162. At Exh.161 there appears to be another say on behalf of defendant Nos.3 to 10.

4 After hearing both sides, learned trial Judge has rejected the application on 10.01.2025 on the ground that by way of amendment the substantial changes are tried to be introduced in respect of the events which

had already taken place long ago and they were in the knowledge of the original plaintiff. The nature of the suit would get change. Hence, the present petition.

5 Heard learned Advocate appearing for petitioners and perused all the records, especially application Exh.149. Important point to be noted is that the original suit was for declaration and injunction. Now, the petitioners intend to add the prayers for declaration in the form of setting aside the sale deeds or deed of partition and also intend to seek the relief of possession.

6 Perusal of application Exh.149 would show that the substantial amendment that is sought was certainly in the knowledge of the original plaintiff; yet, he had not made any such averments for getting the sale deeds set aside, which were recorded on 17.04.1968, 15.06.1978, which would also bring the point of limitation and then by adding the prayer of possession it cannot be then stated that the suit would be brought within limitation. Now, in the application Exh.149 at each point of time, rather why a particular paragraph is necessary to be added by way of amendment; the reason for the same has been stated that though all the instructions were given to the Advocate, the Advocate inadvertently failed to incorporate those things and the plaintiff is ignorant of law. Ignorance of law is no excuse, is the maxim and when the fact was within knowledge, then the original plaintiff would

have been the person, who should have raised the contentions. The Advocate representing the original plaintiff cannot be blamed as the original plaintiff was the signatory to the suit. It cannot be heard that he would have made signature and gave verification on oath without going through the contents of the plaint. If the plaint was not as per his instructions, then he could have refused to sign the plaint and in that event the suit could not have been filed in the present form as it is appearing. It also appears from the record that all the documents now tried to be tendered were already tendered in the different form by the plaintiff. When the nature and substantial portion of the pleadings are going to be affected and though there was knowledge to the original plaintiff, he had not incorporated those things in the original plaint. The rejection of the application under Order VI Rule XVII of the Code of Civil Procedure is justified. There is no case made out for exercise of powers of this Court under Article 227 of the Constitution of India. The writ petition, therefore, stands **dismissed**, at the threshold.

(SMT. VIBHA KANKANWADI, J.)