

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

74 WRIT PETITION NO. 11144 OF 2025

MR. SUNIL NAVALU MAGDUM AND ORS.

VERSUS

MR. NAVALKUMAR BHIMRAO HALBAGOL ORS.

...

Advocate for Petitioners : Mr. S. M. Raibagkar

Advocate for Respondents : Mr. Vinay Kalgonda Patil

...

CORAM : SHAILESH P. BRAHME, J.

DATE : 15.06.2026

PER COURT :

Heard both sides finally with their consent.

2. Petitioner has taken exception to the order dated 28.07.2025 passed below Exh. 33 allowing plaintiff to amend the plaint.

3. It is submitted by the learned counsel for the petitioners that the Trial Court committed error of jurisdiction in not dealing with the aspect of due diligence, as is contemplated by local amendment. The application Exh. 33 does not spell out any reason as to why timely steps were not taken when written statement was filed on 30.10.2021 raising plea of purchase of the suit property vide sale-deed dated 26.11.1993. It is contended that the proposed plea raising challenge to the sale-deed is utterly barred by limitation. All objections of the petitioners are not dealt with by the trial Court.

4. It is vehemently contended that application for amendment under Order VI Rule 17 of the Code of Civil Procedure cannot be entertained after commencement of the trial and in the present case affidavit of examination-in-chief was filed on 14.09.2023. It is further submitted that Trial Court totally overlooked the law laid down by the Supreme Court in **Vidyabai Vs. Padmalatha; 2009 AIR (SC) 1433**, and wrongly relied on the ratio laid down

in **Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and another**; AIR 2022 SC 4256.

5. Per contra, learned counsel for the respondents supports the impugned order. It is contended that to decide the real controversy between the parties, the Trial Court has every jurisdiction to entertain application even after commencement of the trial. It is submitted that the Trial Court rightly referred to the principles culled down by the Supreme Court in the matter of **Life Insurance Corporation of India (supra)**.

6. The respondents have filed Spl. Civil Suit No. 26/2021 for perpetual and mandatory injunction. Written statement was filed on 30.10.2021. Issues were settled at Exh. 23. Application Exh. 33 was filed on 03.02.2025 seeking incorporation of paragraph no. 6A and 6B, prayer clause 13A(1) and other ancillary amendment. It is objected by the petitioners by filing say. The affidavit of examination-in-chief was filed on 14.09.2023. The plaintiff's witness is not subjected to any cross-examination and application Exh. 33 was preferred under Order VI Rule 17 of the Code of Civil Procedure.

7. In view of the law laid down by the supreme Court in the matter of **Vidyabai (supra)**, the suit in the present matter can be said to have been commenced. It is not rule of thumb that Court is powerless to consider any application for amendment to the pleadings after commencement of the trial. Under facts and circumstances of each case, the power vests with the Trial Court to exercise jurisdiction under Order VI Rule 17 of the Code of Civil Procedure.

8. My attention is adverted to paragraph no.17 of **Life Insurance Corporation of India (supra)**. Those can be said to be the guiding parameters for considering the application under Order VI Rule 17 of C.P.C. I am of the considered view that the proposed amendment is necessary to decide the real controversy between the parties as well as to avoid multiplicity of the proceedings. A hyper technical approach needs to be

avoided, while considering the application for amendment. The nature of the proceeding is not going to change by permitting the applicant to introduce new plea and the prayers.

9. The learned counsel for the petitioners is right to some extent that written statement was filed on 30.10.2021 and such amendment could have been solicited on earlier occasion. But that cannot be said to be the impediment. It would be appropriate to extend opportunity of hearing to the both parties in the Court at the first instance itself.

10. The witness is not subjected to cross-examination. The petitioners would get opportunity to file additional written statement. In that view of the matter, I find that no serious prejudice would be caused to the petitioners.

11. Plea of limitation is raised by the petitioners that the pleadings and the prayers sought to be introduced is barred by time. It is difficult to fathom as to sustainability of the plea of limitation at this juncture of the proceeding. An objective scrutiny is required to be taken during the course of trial and it would be open for the petitioners-defendants to raise plea of limitation in respect of registered sale-deed dated 26.11.1993. The issue of limitation is mixed question of law and facts.

In that view of the matter, I find that a plausible view has been taken by the Trial Court. I do not find any perversity, arbitrariness or illegality in the impugned order.

12. (a) The writ petition is dismissed.

(b) The Trial Court is requested to conclude the proceedings expeditiously.

(SHAILESH P. BRAHME, J.)

mkd/-