

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR**

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11553/2025

Sidgonda Ningappa Birajdar
Age: 57 yrs., Occ. Agriculture,
R/o. Bhivargi, Tal. Jath,
Dist. Sangli

...Petitioner

Versus

Kadgonda Ningappa Birajdar
Age: 59 Yrs., Occcu.- Agriculture,
R/o. Karajangi and Bivargi,
Tal. Jath, Dist. Sangli

...Respondent

...

Shri T.S. Ingale, Advocate for the petitioner
Shri Ramdas Shelke, a/w Ms Vaishnovi Shelke, a/w Shri Nikhil
Dhamadhikari, Advocate for respondent

...

CORAM : PRAVIN S. PATIL, J.

DATE : 24th APRIL, 2026.

ORAL JUDGMENT

1. Heard.
2. Shri Ramdas Shelke, learned Counsel appeared Suo Motu and waives service of notice for the respondent. By consent of the parties the matter is taken for final disposal.

3. In the present petition, the challenge is to the order passed by the learned Trial Court in a pending civil suit below Exhibit 99, filed by the plaintiff/respondent under Order VI Rule 17 of the Civil Procedure Code.

4. A perusal of the record shows that the respondent (original plaintiff) has filed the suit for partition and possession of his share in the suit property. According to the plaintiff, the suit property is ancestral in nature and was in the joint possession and cultivation of both the plaintiff and the defendant.

5. It is his case that, in the year 2013, he separated his share and intended to sell the same. However, the present petitioner/defendant objected to the said transaction by issuing a public notice in the daily newspaper "Tarun Bharat."

6. In view of the aforesaid cause of action, the plaintiff filed the suit for partition and possession.

7. It is pertinent to note that, before the Trial Court, the respondent/plaintiff had filed an application for temporary injunction, contending that he was in possession of his share and that the petitioner/defendant should not disturb his peaceful and lawful possession over the suit property. The said application came to be rejected by the learned Trial Court by its order dated 12.02.2015.

8. The respondent/plaintiff challenged the said order before the District Judge at Sangli by filing Misc. Civil Appeal No. 26 of 2015. In

the said appeal, the respondent/plaintiff succeeded, and his application for temporary injunction came to be allowed by directing the petitioner/defendant not to dispossess the plaintiff from the joint possession of the suit property until the final disposal of the suit.

9. The order of granting temporary injunction in favour of respondent/plaintiff is in force till date. However, respondent/plaintiff moved application for amendment of suit stating that despite the temporary injunction granted by the learned District Judge by order dated 29.02.2020 in his favour, the respondent/plaintiff created obstruction.

10. Respondent/plaintiff further stated in his application that since year 2013, he was not allowed to enter into his suit field. No share from the yield was given to him. Hence, claimed the relief of mesne profits from the date of filing suit till the date of restoration of possession. It is further alleged that petitioner/defendant is prolonging the proceeding of suit filed by him and, therefore, delay is causing to decide the suit, hence, on this count also he is entitled for relief of mesne profits.

11. The application for amendment filed by the respondent/plaintiff was strongly objected by the present petitioner. According to the present petitioner, admittedly, it is the own contention of the respondent/plaintiff that suit property was in a joint cultivation of plaintiff and defendant. So also, it is stated that, at the time of filing of the suit, respondent/plaintiff never stated that he was not in possession.

According to him, the respondent/plaintiff has filed the application for temporary injunction on the ground that he is in possession of suit property and petitioner/defendant is trying to interfere to his peaceful possession over the suit property. The same was confirmed by learned District Judge by granting temporary injunction. Hence, in such scenario, application for mesne profits is nothing but attempt to create pressure on the petitioner/defendant in the matter.

12. It is further pointed out by the petitioner that at the time of filing the amendment application, which was admittedly filed on 22.01.2025, it is clear from the record that the trial Court after framing of issues on 27.01.2015 has completed the evidence of respondent/plaintiff on 18.11.2019 and evidence of respondent/defendant has been commenced on 18.10.2024 and his cross examination has also been completed. Therefore, such amendment application filed by the respondent/plaintiff at a belated stage, without pointing out any due diligence on his part, the amendment application ought to have been rejected.

13. Respondent/plaintiff strongly opposed the petition. According to him, as there is dis-obedience of order of temporary injunction which is operating in his favour, he is justified to avail the relief of mesne-profits in the matter. He stated that due to dis-obedience of order, now the possession over the suit property is of petitioner/defendant and same being illegal, he is entitled for the relief of mesne profits.

14. In the background of this factual position, learned trial Court decided the application by the impugned order dated 13.08.2025 and by recording the reason that to minimize the litigation between the parties, allowed the amendment application and thereby the respondent/plaintiff has been permitted to amend the plaint and add the relief of mesne profits as prayed in the amendment application.

15. In the present matter after hearing both the parties, it is clear from the record that the application for amendment of suit was filed after the evidence of the parties was recorded by the trial Court. It would be relevant to consider the Order VI Rule 17 of the Civil Procedure Code which reads as under:

“Order VI Rule 17: Amendment of Pleadings- the Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties;

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

The proviso of this provision clearly states that no application for amendment shall be allowed after the trial has commenced, unless the applicant shows that in spite of due diligence, he could not file the application. However, perusal of application filed by the plaintiff, there

is no mentioned of any due diligence on his part in the matter. Consequently, without satisfaction of due diligence, the amendment application was allowed by the Trial Court.

16. At this stage, it is necessary to take note of the fact that, in the present matter, the application for temporary injunction in favour of the respondent/plaintiff was allowed by the learned District Judge by judgment and order dated 29.02.2020. The evidence of the respondent/plaintiff started on 18.11.2019 and completed on 14.12.2023. However, during this period, the said subsequent events were not brought on record by the respondent/plaintiff.

17. Once the Court has passed the temporary injunction, it is necessary for the parties to point out the Court, if there is a breach or dis-obedience on the part of defendant in the matter. But, in the present case, the respondent/plaintiff has adopted a novel idea and instead of initiating proceeding for breach of injunction, has filed the amendment application for grant of mesne profits.

18. It is also pertinent to note that the injunction in favour of the respondent/plaintiff is of dated 29.02.2020 whereby petitioner/defendant was restrained to interfere the peaceful possession of respondent/defendant but in the amendment application, the relief of mesne profits is claimed with effect from 2013. Learned Trial Court, therefore, was expected to discuss as to how the relief of mesne profits can be claimed by respondent/plaintiff in the matter. But, there is no

consideration of the same in the impugned order. All these aspects are not properly looked into by the learned trial Court while deciding the amendment application.

19. In my opinion, it will be proper to quash and set aside the impugned order dated 13.08.2025 and remanded back the matter to the trial Court to decide afresh within a time bound period. Accordingly, I proceed to pass the following order:

ORDER

- i) The Writ Petition is partly allowed.
- ii) The impugned order dated 30.08.2025 is hereby quashed and set aside.
- iii) The matter is remanded back to the learned Trial Court to decide afresh by taking into consideration all the submission of both the parties.
- iv) The amendment application be decided within a period of four weeks from the date of appearance of the parties.
- v) Parties are directed to appear before the trial Court on 10.06.2026.
- vi) The trial Court should act on the authenticated copy of the order.

20. The Writ Petition is disposed of accordingly. No order as to the costs.

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[PRAVIN S. PATIL, J.]